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2005 ANNUAL REPORT

A REPORT ON THE ACTIVITIES OF THE WEST VIRGINIA ATTORNEY GENERAL'S CONSUMER PROTECTION AND ANTITRUST DIVISIONS

I.

FOREWORD

Attorney General Darrell V. McGraw, Jr., submits this report to the Governor and Legislature of West Virginia pursuant to West Virginia Code § 46A-7-102(4)(2005). This report outlines the education, mediation, and enforcement activities of Attorney General McGraw's Consumer Protection and Antitrust Divisions from November 20, 2004 through November 19, 2005.

II.

INTRODUCTION

Attorney General McGraw's Consumer Protection and Antitrust Divisions operate under the direction of one Deputy Attorney General. The Divisions are responsible for enforcing the West Virginia Consumer Credit and Protection Act, W. Va. Code § 46A-1-101 et seq.; the West Virginia Antitrust Act, W. Va. Code § 47-18-1 et seq.; and the Preneed Funeral Contracts Act, W. Va. Code § 47-14-1 et seq. There are five Assistant Attorneys General assigned to the two Divisions. One attorney is assigned full-time to enforce the Antitrust Act, one attorney is assigned half-time to the Preneed Funeral Unit, and the remaining lawyers on staff are responsible for enforcing the West Virginia Consumer Credit and Protection Act (the Act). During this reporting period, the Division received \$88,305,405.52 in refunds, debt cancellation, value received, and funds for consumer education for the State and its citizens. (See Exhibits 1 and 2.)

III.

CONSUMER EDUCATION

The mission of Attorney General McGraw's Consumer Protection Division is to protect West Virginia citizens from those that would harm them. Undoubtedly, the best protection is education and the Division embarks each year on educating citizens about the latest scams, consumer fraud, and abuse. The Division employs four consumer advocates and a senior citizen liaison officer in an effort to reach citizens all over the State.

In November 2005, the Attorney General began a statewide initiative to educate consumers about the dangers of credit card debt. "The Truth About Credit - What We All Must Know" involved 12 public forums that examined important issues relating to the credit card industry. Once the forums are completed, the Attorney General will present his findings in a report to the Legislature. In addition, he plans to introduce several pieces of legislation aimed at eliminating abusive credit card practices.

During the spring of 2005, the Attorney General partnered with the Consumer Product Safety Commission (CPSC) and the West Virginia Bureau of Senior Services in an "Older Consumer Safety Campaign." Staff members from the Division, the West Virginia Bureau of Senior Services, and the CPSC visited senior centers throughout the State presenting a program that was designed to curb to a recent epidemic of injuries sustained by senior citizens.

Finally, the Attorney General is in the process of updating his website, www.wvago.us, and hopes to have the final revisions completed by February 1, 2006.

IV.

MEDIATION

The backbone of the Division's efforts – and its successes – is its mediation process. If a consumer has a dispute with a business, he can call the Division's toll-free hotline at 1-800-368-8808. If a consumer calls, a written complaint form and instructions are sent to his home. When the complaint form is returned, it is assigned to a non-lawyer mediator, who contacts the business on behalf of the consumer requesting a response to the complaint. The mediation process is voluntary, but the intent is to reach a settlement satisfactory to both the business and the consumer. The amount of money saved by consumers and businesses in litigation costs as a result of mediation cannot be known, but it must surely be substantial.

The sheer volume of the Division's mediation activity attests to its utility. During the reporting period, the Division received 8,683 complaints. (See Exhibits 1, 2 and 3.) The most common complaints involved credit and cellular telephones. (See Exhibit 4.) Of the complaints pending at the beginning of or received during the reporting period, the Division closed 9,591. As a result of the Division's mediation efforts, consumers received approximately \$416,264.94 in cash refunds, and \$1,433,107.19 in debt cancellation and value for products and services received. The total amount received in mediation was \$1,849,372.13.

V.

ENFORCEMENT PROCEEDINGS

When mediation is unsuccessful, the consumer's complaint is reviewed by the Deputy Attorney General who decides whether to refer the file to a staff attorney. Often a simple letter from the attorney to the business will prompt a result acceptable to all parties. If mediation does not resolve the matter, the staff attorney, in consultation with the Deputy, may initiate an investigation.

A.

LITIGATION

Following a pre-complaint investigation, the Attorney General can file suit against a company pursuant to W. Va. Code §§ 46A-7-108 through -111(2005) and petition the court to enjoin the company from doing business illegally in West Virginia. The Attorney General can also obtain restitution for consumers, monies for consumer education, investigation and court costs, attorney fees, and civil penalties. During this reporting period, Attorney General McGraw recovered \$62,912,498.42 through consumer protection litigation. (See Exhibits 1 and 2.) Identified below are the cases that Attorney General McGraw's Consumer Protection Division had in litigation during the 2005 reporting period.

Darrell V. McGraw, Jr., Attorney General, ex rel. State of West Virginia;
the West Virginia Public Employees Insurance Agency; and
the West Virginia Department of Health and Human Resources
v. The American Tobacco Company, et al.
(Civil Action No. 94-C-1707 - Circuit Court of Kanawha County)

Attorney General McGraw has previously reported a settlement reached between West Virginia, 45 other states, the four original participating manufacturers, and dozens of subsequent participating manufacturers. Pursuant to the terms of that settlement, West Virginia is scheduled to receive \$1,736,741,427.33^{*1} over 25 years and thereafter \$70,000,000.00* per year (adjusted upward for inflation and downward for market share loss as necessary) as long as the defendant manufacturers or their successors or assigns remain in business. In addition to the sums set forth above, West Virginia will receive another \$196,087,655.47* payable beginning in 2008, separate from and in addition to, the regular yearly settlement payments. These additional funds were awarded to West Virginia in recognition of the key role that Attorney General McGraw played in the nationwide tobacco litigation. The additional payment of \$196,087,655.47* is almost four times the amount West Virginia would have received under the standard distribution formula established in the Master Settlement Agreement (MSA).

Since the execution of the MSA, the State has collected a total of \$370,820,097.45.* During this reporting year, West Virginia received \$56,511,981.22. West Virginia will receive its next payment on April 15, 2006.

A manufacturer that did not participate in the MSA is required to place money in an escrow account. If the non-participating manufacturer fails to comply with this requirement, the Attorney General can sue it pursuant to W. Va. Code

¹ Monies that are followed by an * were not counted during this reporting period.

§ 16-9B-3(b)(3)(2005). During this reporting period, the State filed seven lawsuits against non-participating manufacturers because they failed to place monies in the escrow account. The companies' names, dates the complaints were filed, and the status of the suits are as follows:

COMPANY	DATE FILED	STATUS
Poro International Business Corp. Ltd.	12/10/04	Litigation pending
Gulf Conversion	12/17/04	\$403,611.18*
Grand Tobacco	12/17/04	Litigation pending
GTC Industries Limited	12/17/04	Litigation pending
Grand River Enterprises	12/21/04	\$859,239.75*
Keblon, S.A.	05/27/05	\$128,401.10*
Samurai	05/27/05	Litigation pending

2.

Cross Country Bank, et al. v. Darrell V. McGraw, Jr., Attorney General **(Civil Action No. 04-C-464 - Circuit Court of Kanawha County)**

On June 21, 2005, Attorney General McGraw settled with Delaware-based Cross Country Bank, its collection subsidiary, Applied Card Systems and the companies' owner, Rocco A. Abessino (Cross Country Bank). The Division had commenced an investigation of Cross Country Bank during the summer of 2003 after several employees in Cross Country Bank's Beckley office reported that the company was engaging in deceptive marketing of credit cards and abusive debt collection practices. The Division also learned

that Cross Country Bank was being investigated by the Federal Deposit Insurance Corporation and had already been sued by several states.²

Under the terms of the settlement, Cross Country Bank agreed to pay \$1,500,000.00 to the State to be used for consumer protection and education purposes. Approximately \$160,000.00 of the money obtained was used for debt relief for West Virginia consumers, which resulted in the cancellation of 2,168 accounts, for a total of \$1,998,758.49. Cross Country Bank also agreed to notify the three major consumer reporting agencies to delete all references to the defaulted accounts from consumers' credit records. The total settlement value was \$3,338,758.49.

Moreover, the order enjoined Cross Country Bank from engaging in unlawful conduct, including debiting consumers' accounts without their express authorization; contacting consumers by telephone repeatedly or at unusual times or places known to be inconvenient; oppressing or abusing consumers by the use of profane or obscene language; unreasonably publicizing information about alleged indebtedness to third parties; and, falsely stating that a collection call is "urgent" or an "emergency."

3.

State ex rel. Darrell V. McGraw, Jr. v. Purdue Pharma, LP, et al.
(Civil Action No. 01-C-137-S - Circuit Court of McDowell County)

On June 11, 2001, Attorney General McGraw sued Purdue Pharma, LP, Purdue Pharma, Inc., Purdue Frederick Company, Abbott Laboratories, and Abbott Laboratories, Inc. alleging various product liability claims, as well as consumer protection and antitrust

² As of the date of this report, the states of Minnesota, New York, Texas, and Wisconsin have suits pending against Cross Country Bank.

violations. The defendants manufacture and distribute OxyContin, which is a drug used for chronic pain relief. OxyContin has been widely abused and is frequently crushed to be either inhaled or injected.

In his complaint, Attorney General McGraw alleged that the defendants made false, deceptive, and misleading representations about OxyContin and failed to disclose material facts in its marketing of the drug to physicians and the general public. The Attorney General further claimed that the defendants failed to use reasonable care in the manufacturing, marketing, and distribution of OxyContin.

The case settled on November 4, 2004. Under the terms of the agreement, the defendants will pay the State a total of \$10,000,000.00* over the next four years. The State received its first payment of \$2,500,000.00 on December 15, 2004. The settlement money is earmarked for education and addiction rehabilitation services.

4.

State ex rel. Darrell V. McGraw, Jr. v. TeleCheck Services, Inc., et al.
(Civil Action No. 00-C-3077 - Circuit Court of Kanawha County)
(Docket No. 30731 - West Virginia Supreme Court of Appeals)

On September 15, 2005, the Division settled its long-standing suit against TeleCheck Services, Inc. (TeleCheck), of Houston, Texas and its affiliates. The Division sued TeleCheck in December, 2000, after receiving consumer complaints alleging that the company engaged in unlawful debt collection and consumer reporting practices.

The Division's investigation focused on TeleCheck's function as a check guarantee company whose comprehensive database was used by merchants to determine whether to accept checks. If a check guaranteed by TeleCheck is dishonored, TeleCheck

purchases the check from the merchant and becomes the owner and collector of the check.

Under the terms of the settlement, TeleCheck agreed to pay \$450,000.00 to the State, which will be used as restitution. The Agreed Order also required TeleCheck to provide the Attorney General with a written plan outlining how it will comply with the terms of the settlement, including guidelines for employee training. Moreover, the Agreed Order required TeleCheck to ensure that consumers give “express verifiable authorization” before payments are debited from their checking accounts; that TeleCheck comply with the rules of the National Automated Clearinghouse Association when debiting dishonored check fees; and, that TeleCheck publish a quarter page notice in five major daily newspapers in West Virginia advising victims of forgery, identity theft, or counterfeiting of the steps they can take if their checks are declined by TeleCheck or any other merchant subscribers.

5.

State ex rel. Darrell V. McGraw, Jr. v. H & H Windows Unlimited, Inc. **(Civil Action No. 03-C-3075 - Circuit Court of Kanawha County)**

H&H Windows Unlimited, Inc. located in Morgantown, West Virginia, manufactures, supplies, and installs vinyl insulated windows. In early 2003, the Division began investigating H&H because it received complaints that H&H sold defective windows and did not replace them under the company’s lifetime warranty. In March 2003, H&H entered into an Assurance of Discontinuance with the State. The assurance obligated H&H to repair or replace the defective windows for all consumers who had filed complaints with the Division and to honor all future claims made by consumers under its lifetime warranty.

In December 2003, the Division filed suit against H&H because it had violated the terms of the assurance. In January 2004, the State and H&H settled the lawsuit and H&H agreed to complete all past due repairs by February 16, 2004. H&H also agreed to take care of all future complaints within 120 days after receiving them from the Division. During this reporting period, 34 consumers have received replacement windows or repairs to their existing windows for a total value of \$68,780.00.

6.

State ex rel. Darrell V. McGraw, Jr. v. Phillips & Cohen Associates, Ltd.
(Civil Action No. 05-MISC-175 - Circuit Court of Kanawha County)

In March 2005, the Attorney General began investigating Phillips & Cohen Associates, Ltd., a New Jersey collection agency. The investigation began after the Attorney General received complaints from consumers that Phillips & Cohen was threatening consumers with jail, discussing their alleged debts with others, and attempting to collect money for debts that have already been paid. Moreover, Phillips & Cohen was not registered to do business in West Virginia and had not posted a bond, a requirement for all collection agencies doing business in the State. The Attorney General served Phillips & Cohen with an investigative subpoena and, when the business failed to answer the subpoena, the Attorney General filed a lawsuit to enforce it. Shortly thereafter, Phillips & Cohen agreed to comply with the subpoena. After the Division reviewed the subpoenaed documents, Phillips & Cohen entered into an Assurance of Discontinuance wherein it agreed to become a licensed collection agency, post a bond, and pay the State \$12,500.00 to be used for consumer education.

7.

State ex rel. Darrell V. McGraw, Jr. v. Carl Crowder, et al.
(Civil Action No. 05-C-88 - Circuit Court of Kanawha County)

From 2000 to 2004, the Attorney General's Office received several complaints about the failure of Carl Crowder, a seller residing in Charleston, West Virginia, to deliver merchandise purchased on eBay. After working with eBay investigators, the Division learned that approximately 200 eBay buyers had been defrauded by Crowder.

On January 13, 2005, the Division sued Carl Crowder and Source Sales d/b/a Carl Crowder's Outlet Auction (Crowder). On February 7, 2005, the Attorney General settled with Crowder. Under the terms of the settlement, consumers nationwide will receive \$13,657.57* in refunds, and the State will receive an additional \$3,500.00* in civil penalties. Crowder agreed to pay \$1,000.00 a month until the debt is satisfied. The Attorney General has begun distributing some of the refunds to consumers. During 2005, the Division distributed \$10,776.70.

8.

State ex rel. Darrell V. McGraw, Jr. v. Christopher Scott Long, et al.
(Civil Action No. 04-C-818 - Circuit Court of Kanawha County)

On March 30, 2004, the Attorney General sued Christopher and Cari Long d/b/a Countertops Plus. The Division began investigating Countertops Plus after receiving numerous complaints from consumers in Cabell, Lincoln, and Putnam Counties. Consumers complained that they had paid Countertops Plus deposits or paid in full for merchandise that was never delivered.

Countertops Plus entered into an Agreed Final Order with the Attorney General on July 19, 2004 wherein the owners agreed to pay 10 consumers approximately \$9,646.13* in restitution. Consumers received \$6,600.00 during this reporting period.

9.

State ex rel. Darrell V. McGraw, Jr. v. Regency Park at Huntington, LLC, et al.
(Civil Action No. 04-C-901- Circuit Court of Cabell County)

On September 29, 2004, the Attorney General sued Regency Park, an assisted living facility in Huntington, West Virginia. Under the terms of the contract between consumers and the facility, residents paid for their housing a month in advance. Employees at Regency Park told its residents and their families that the family would receive a pro-rata refund if the resident died before the end of the month. Several consumers complained that the company refused to provide the promised refunds.

In November 2004, Regency Park settled with the Division. On November 15, 2005, the defendants paid \$16,317.35* to 11 families. During this reporting period, the Division has obtained \$5,728.08 for 6 families.

10.

State ex rel. Darrell V. McGraw, Jr. v. Huey Small d/b/a H&S Paving, et al.
(Civil Action No. 97-C-1041 - Circuit Court of Kanawha County)

In 1998, the Division put a stop to a paving scam that was operated by Huey Small of Mercer County. Although Small always promised to do the job for a good price, his band of workers refused to leave consumers' homes until they had coerced victims to pay large sums of money. The Division sued Small, and the Circuit Court of Kanawha County ordered him to pay \$125,458.00* in consumer restitution.

When Small disobeyed the court's orders to pay restitution, he was jailed for contempt. Small was finally released from jail when he agreed to pay off his debt to consumers in monthly installments of \$500.00. The Division has collected \$5,500.00 during the reporting period.

11.

State ex rel. Darrell V. McGraw, Jr. v. Alyon Technologies, Inc., et al.
(Civil Action No. 03-C-1197 - Circuit Court of Kanawha County)

On May 20, 2003, Attorney General McGraw sued Alyon Technologies, Inc. and its CEO, Stephane Touboul, for violating the Act. In his complaint, the Attorney General alleged that the defendants used computer technology to capture and track telephone numbers of consumers who allegedly went to a pornographic website. Many consumers were billed who had not visited the site, did not own computers, or did not have Internet service.

In August 2003, the Division and the defendants reached an agreement in which the defendants agreed not to collect any of the alleged debts owed by West Virginia consumers and to block all telephone calls originating from West Virginia. In April, Alyon agreed to pay the State \$5,000.00* in 6 installments. The State received \$1,666.68 during the reporting period.

12.

State ex rel. Darrell V. McGraw, Jr. v. The Mandatory Poster Agency, Inc., et al.
(Civil Action No. 05-C-1136 - Circuit Court of Kanawha County)

On May 31, 2005, the Attorney General sued The Mandatory Poster Agency, Inc. d/b/a The West Virginia Labor Law Poster Service, a Michigan corporation, and three of

its officers. Mandatory Poster Agency sells posters for \$59.50, plus \$5.75 shipping and handling, that notify employees of state and federal laws on employee rights and safety. Similar posters are available free of charge from state or federal agencies, such as the West Virginia Bureau of Employment Programs, and are required by state and federal law to be displayed at the workplace. On August 29, 2005, Mandatory Poster Agency entered into an agreed order wherein it agreed to refund to any West Virginians who complained to the Division by December 26, 2005. To date, the Division has received \$207.25 in consumer restitution.

13.

State ex rel. Darrell V. McGraw, Jr. v. Coupon Connection of America, Inc., et al.
(Civil Action No. 05-C-81 - Circuit Court of Lincoln County)

On May 24, 2005, the Division filed a lawsuit against Coupon Connection of America, Inc. (Coupon Connection), a Texas corporation, and two of its officers, in the Circuit Court of Lincoln County. Coupon Connection advertised a bogus business opportunity involving the sale of grocery coupons. The lawsuit alleged that the defendants operated a pyramid scheme and committed several unfair or deceptive acts or practices such as misrepresenting the money-making potential of the program. After filing the lawsuit, the Attorney General learned that at least 12 West Virginia residents had been victimized by Coupon Connection's scheme.

On July 15, 2005, a preliminary injunction hearing was held in the Circuit Court of Lincoln County. On November 18, 2005, the judge enjoined all three defendants from doing business in West Virginia. The case is pending.

14.

State ex rel. Darrell V. McGraw, Jr. v. Johnson & Johnson, et al.
(Civil Action No. 04-C-156 - Circuit Court of Brooke County)

In August 2004, the Attorney General filed a lawsuit against Johnson & Johnson, Janssen Pharmaceutica Products, LP and Janssen Pharmaceutica, Inc. These companies manufacture Risperdal, a prescription drug used for certain mental illnesses, and Duragesic, a narcotic pain reliever absorbed through a skin patch. The State alleged that the defendants had misled and misrepresented to doctors the risks and benefits of these drugs. The matter is pending.

15.

State ex rel. Darrell V. McGraw, Jr. v. JBC Legal Group, PC, et al.
(Civil Action No. 04-C-2083 - Circuit Court of Kanawha County)

On July 28, 2004, the Attorney General sued JBC Legal Group, PC, and its officers. The suit alleged that JBC threatened to criminally prosecute consumers, harassed them by telephone, and refused to provide verification of debts when disputed by consumers.

On July 30, 2004, the Circuit Court of Kanawha County enjoined JBC from collecting debts in West Virginia pending further order of the court. Shortly thereafter, JBC removed the case to federal court. On October 18, 2004, U.S. District Judge John T. Copenhaver, Jr. remanded the case back to state court.

16.

State ex rel. Darrell V. McGraw, Jr. v. Check Investors, Inc., et al.
(Civil Action No. 03-C-1161 - Circuit Court of Kanawha County)

On May 15, 2003, the Division sued Check Investors, Inc. a New Jersey collection agency, Barry Sussman, its owner, and several of its principals, d/b/a National Check Control. Specifically, the suit alleged that the defendants threatened to arrest and criminally prosecute consumers unless payment for alleged bad checks plus \$130.00 in additional unlawful collection fees was wired to the company within 24 hours. National Check Control also refused to verify debts when disputed by consumers and was not licensed to do business in West Virginia.

On June 19, 2003, the Circuit Court of Kanawha County enjoined National Check Control from any debt collection activities in West Virginia until further order of the court. The case is pending.

17.

State ex rel. Darrell V. McGraw, Jr. v. Donna K. Diulus, et al.
(Civil Action No. 04-C-281 - Circuit Court of Marion County)

On August 31, 2004, the Attorney General sued Pennsylvania residents, Donna and Carmine Diulus d/b/a CMS Pools. CMS Pools sold above-ground swimming pools. In October 2004, the court enjoined CMS Pools from doing business in West Virginia. On September 6, 2005, the court granted the Attorney General's motion for summary judgment for \$271,123.00.* The court found that CMS Pools had made material omissions and misrepresentations in its advertising and had failed to provide consumers with notice of their three-day right to cancel. The order also prohibited the defendants from doing business in West Virginia until the judgment is paid in full.

18.

State ex rel. Darrell V. McGraw, Jr. v. Bear, Stearns & Co., Inc., et al.
(Civil Action No. 03-C-133M - Circuit Court of Marshall County)
(Docket No. 041375 - West Virginia Supreme Court of Appeals)

On June 23, 2003, Attorney General McGraw sued ten Wall Street firms for multiple and repeated violations of the Act. The defendants named in the complaint included Bear Stearns, Credit Suisse First Boston, Goldman Sachs, Lehman Brothers, Citigroup Global Markets, J.P. Morgan, Morgan Stanley, Merrill Lynch, UBS Warburg, and U.S. Bancorp Piper Jaffray.

From July 1, 1999, to the present, the defendants offered both investment banking and research and analysis services. The Attorney General's lawsuit alleged that the analysts issued reports that misstated and exaggerated the value of stocks and other financial products in order to benefit investment banking clients. The trial court denied the defendants' motion to dismiss, and then certified questions to the West Virginia Supreme Court of Appeals. On July 7, 2005, the Supreme Court ruled that conduct ancillary to the business of buying and selling securities was not subject to the Act. The matter was dismissed.

19.

State ex rel. Darrell V. McGraw, Jr. v. Minnesota Mining and
Manufacturing Company, et al.
(Civil Action No. 03-C-109 - Circuit Court of Lincoln County)

On August 6, 2003, the Attorney General sued Minnesota Mining and Manufacturing Company, Mine Safety Appliances Company, and American Optical Corporation in the Circuit Court of Lincoln County. The State alleged that the defendants had violated the Act by falsely advertising the capabilities of the dust masks they sold,

which are used in industrial settings. Specifically, the State alleged that while the dust masks were marketed as being safe and effective, the masks repeatedly failed. The defendants removed the case to United States District Court for the Southern District of West Virginia. In January 2005, the case was remanded to state court.

20.

State ex rel. Darrell V. McGraw, Jr. v. Wholesale Used Cars, Inc.
(Civil Action No. 03-C-2839 - Circuit Court of Kanawha County)

Wholesale Used Cars, Inc. was a “buy here-pay here” used auto dealer located in Charleston, West Virginia. In November 2003, the Division sued Wholesale and its officers, Charles and Jeryl Parker. Consumers complained that Wholesale sold them used vehicles that became inoperable shortly after purchase. Review of Wholesale’s loan documents revealed numerous additional violations, including disclaiming the implied warranty, asserting a right to collect a late fee before expiration of the 10-day grace period, charging late fees that exceeded the statutory permissible fee, and failing to provide the disclosures required by the Truth in Lending Act, 15 U.S.C. § 1638 et seq. At a preliminary injunction hearing on January 9, 2004, Wholesale agreed to stop financing cars until its loan documents complied with the requirements of state and federal law.

Thereafter, the court appointed a special commissioner to make findings of fact, conclusions of law, and recommendations as to appropriate consumer restitution. On October 11, 2005, the court ordered the defendants to pay \$28,616.34* in consumer restitution and \$28,616.34* in civil penalties. The defendants have made no payments. The Division will make a claim on the defendant’s dealer bond.

21.

**Medco Health Solutions, Inc., et al.
v. West Virginia Public Employees Insurance Agency
(Civil Action No. 02-C-2769 - Circuit Court of Kanawha County)**

On October 25, 2002, the West Virginia Public Employees Insurance Agency (PEIA) was sued by Medco Health Solutions, Inc. and Medco Health Prescription Solutions, LLC (Medco). The complaint alleged that PEIA had not paid all sums owing under its pharmacy benefits management contract with Medco and had not paid Medco all sums owing. PEIA filed a counterclaim and third-party complaint. In December 2003, Medco's motion to dismiss the counterclaim and third-party complaint was denied in part and granted in part. The matter is proceeding with discovery.

22.

**State ex rel. Darrell V. McGraw, Jr., et al. v. Medco Health Solutions, Inc., et al.
(Civil Action No. 02-C-2944 - Circuit Court of Kanawha County)**

On November 13, 2002, the Attorney General and PEIA filed a separate complaint against Medco Health Solutions, Inc. and others, claiming that the company's pharmacy benefits manager and its affiliated companies had used misleading and deceptive representations in securing the pharmacy benefits management contract with PEIA. The lawsuit also alleged that Medco engaged in fraud, tortious interference with the business relationship, and breach of contract. PEIA and the Attorney General are seeking restitution, punitive damages, civil penalties and costs. The case is pending.

23.

State ex rel. Darrell V. McGraw, Jr. v. Tasks General Contracting, et al.
(Civil Action No. 05-C-81 - Circuit Court of Marion County)
(Case No. 05-00956 - U.S. Bankr. N.D. W. Va.)

On September 10, 2004, the Attorney General received a consumer complaint alleging that Tasks General Contracting and Paul Nestor d/b/a Tasks General Contracting (Tasks) of Fairmont, West Virginia, received money to do home improvement work it never completed. Although Tasks orally agreed to refund the consumer's money, he failed to do so. Consequently, on March 11, 2005, the Attorney General sued Tasks. On October 13, 2005, the Circuit Court of Marion County enjoined Tasks from doing any business in West Virginia until it paid the \$13,125.00* owed to the consumer.

24.

State ex rel. Darrell V. McGraw, Jr. v. Air Doc Services & Supply Company, et al.
(Civil Action No. 05-C-414 - Circuit Court of Mercer County)
(Case No. 05-10819 - U.S. Bankr. S.D. W. Va.)

On June 28, 2005, the Attorney General sued Glenda Marlene and Richard Gibson, individually and d/b/a Air Doc Services and Air Doc Services & Supply Company (Air Doc), heating and cooling contractors operating in Princeton, West Virginia. In the complaint, the State alleged Air Doc took money from consumers and failed to provide all the goods or services. On September 22, 2005, the circuit court enjoined Air Doc from engaging in new contracting business. In October 2005, Air Doc filed Chapter 7 bankruptcy. The matter is stayed while the bankruptcy is pending.

25.

State ex rel. Darrell V. McGraw, Jr. v. Imperial Marketing, et al.
(Civil Action No. 94-C-243 - Circuit Court of Kanawha County)

Attorney General McGraw originally filed this case in 1994 against 106 companies that conducted sweepstakes contests by direct mail or by telephone in violation of the West Virginia Prizes and Gifts Act, W. Va. Code § 46A-6D-1, et seq. All of the companies have stopped doing business illegally in West Virginia. Only one defendant, Seta Corporation, remains. In September 2005, the court granted the State's motion for summary judgement. Seta has moved to set aside the order and a hearing has been scheduled for December 16, 2005.

26.

State ex rel. Darrell V. McGraw, Jr. v. Charles Roth,
d/b/a Valley Pools and Spas Construction, et al.
(Civil Action No. 05-C-432 - Circuit Court of Putnam County)

In October 2005, the Division filed suit against Charles Roth (Roth), a Dunbar, West Virginia resident who for years installed swimming pools under the name Valley Pools and Spas Construction. Consumers complained to the Attorney General that when they contacted Roth, he submitted impressive proposals with low bids and promises of "15 year" warranties. After Roth started the work and received several payments from consumers, he never returned to the job site. The lawsuit seeks an order enjoining Roth from engaging in any business activity in the State until he pays restitution to all consumers and is licensed as a contractor. A hearing on the Division's Petition for Preliminary Injunction is scheduled for December 8, 2005.

27.

In re: Clifford Ealy
(Case No. 03-22312 - U.S. Bankr. S.D. W. Va.)

In July 2003, Clifford Ealy d/b/a Howard Ealy Used Cars, located in Princeton, West Virginia, became insolvent and went out of business. The Division received numerous complaints from consumers who had purchased vehicles from Ealy and were unable to get the cars' titles. On October 3, 2003, Ealy filed Chapter 7 bankruptcy. The State has noted its appearance in the bankruptcy proceedings and is attempting to obtain titles for the consumers who complained. The matter is pending.

28.

State ex rel. Darrell V. McGraw, Jr. v. Level Propane Gases, Inc.
(Civil Action No. 01-C-1654 - Circuit Court of Kanawha County)
(Case No. 02-16172 - U.S. Bankr. N.D. Ohio)

In May 2001, the Attorney General sued Level Propane Gases, Inc. (Level), of Cleveland, Ohio, a seller of propane gas for home heating and cooking. In its complaint, the Division alleged that Level started charging customers far more money for propane gas than was allowed under the terms of their contracts. In addition, the complaint alleged that during December 2000 and January 2001, an exceptionally cold winter, Level was unable to meet customer demand.

On February 6, 2002, the Division settled with Level. Under the terms of the settlement, the State was to receive \$25,000.00* for consumer education and restitution. Before Level made a payment to the State, it filed for bankruptcy protection in the United States Bankruptcy Court for the Northern District of Ohio. The bankruptcy case is pending.

B.

**ASSURANCES OF DISCONTINUANCE
AND SETTLEMENT AGREEMENTS**

If, after investigating a business, a lawyer in Attorney General McGraw's Consumer Protection Division determines that the company has engaged in conduct that violates the Act, he or she typically tries to settle the matter with the business without filing a lawsuit. Specifically, the attorney will ask the company to sign an Assurance of Discontinuance pursuant to W. Va. Code § 46A-7-107(2005) or enter into a settlement agreement. This approach has proven very successful. During this reporting period, the division has secured \$18,210,610.49 in refunds, cancellation of debt and product received. The companies that entered into assurances of discontinuance and settlement agreements with the Division during the reporting period are identified below.

1.

IN THE MATTER OF HOMECOMINGS FINANCIAL NETWORK, INC.

On January 5, 2005, the Division entered into an Assurance of Discontinuance with Homecomings Financial Network, Inc. (Homecomings). Homecomings services mortgage loan accounts for consumers. The Division commenced an investigation of Homecomings after receiving complaints that the company was engaging in a wide range of practices that violate the Act, including failing to credit consumers' accounts in a proper and timely manner upon receipt of payments, wrongfully returning payments to consumers without crediting their accounts, failing to respond to consumers' account disputes, collecting and attempting to collect a wide range of impermissible debt collection fees and charges, and failing to furnish consumers with notice of their right to cure default.

In the assurance, Homecomings promised to refrain from the alleged unlawful practices in its future servicing of mortgage loan accounts in West Virginia. Homecomings also agreed to refund and/or credit \$562,000.00 to 1,490 West Virginia consumers. Homecomings also agreed to relieve all consumers who lost their homes through foreclosure from any obligations on the defaulted home loans. As a result of this action, 154 West Virginia consumers were relieved of \$5,938,467.00 in alleged debt and all references to the foreclosure were deleted from their credit records. The total settlement value was \$6,500,467.00.

2.

**IN THE MATTER OF SELECT PORTFOLIO SERVICING, INC. f/k/a
FAIRBANKS CAPITAL CORP.**

On January 5, 2005, the Division entered into an Assurance of Discontinuance with Select Portfolio Servicing, Inc. f/k/a Fairbanks Capital Corp. (Fairbanks) of Salt Lake City, Utah. Fairbanks services mortgage loan accounts for consumers. The Division commenced an investigation of Fairbanks after receiving complaints that the company was engaging in a wide range of practices that violate the Act, including failing to credit consumers' accounts in a proper and timely manner upon receipt of payments, wrongfully returning payments to consumers without crediting their accounts, failing to respond to consumers' account disputes, collecting and attempting to collect a wide range of impermissible debt collection fees and charges, and failing to furnish consumers with notice of their right to cure default.

In the assurance, Fairbanks promised to refrain from the unlawful practices when servicing mortgage loan accounts in West Virginia. Fairbanks agreed to refund and/or

credit 968 West Virginia consumers \$393,500.00. Fairbanks also agreed to relieve all consumers who lost their homes through foreclosure from all obligations on the defaulted home loans. As a result of this action, 113 West Virginia consumers were relieved of \$5,042,261.06 in alleged debt and all references to the foreclosure were deleted from their credit records. The total settlement value was \$5,435,761.06.

3.

IN THE MATTER OF MIDLAND CREDIT MANAGEMENT, INC.

On May 19, 2005, the Division entered into an agreement with Midland Credit Management, Inc. (Midland), a collection agency based in San Diego, California. The Division commenced an investigation of Midland after learning that the company had purchased a portfolio of charged-off accounts from Cross Country Bank of Wilmington, Delaware. Cross Country Bank is a company that markets credit cards with high interest rates and fees to consumers with bad credit. (See Cross Country Bank, et al. v. Darrell V. McGraw, Jr., Attorney General, p. 7, for a summary of the Division's lawsuit against Cross Country Bank.)

Because of the Division's concerns about the Cross Country Bank accounts, the Division asked Midland, and Midland agreed, to close all of its Cross Country Bank accounts with a zero balance and to notify the three major consumer reporting agencies to delete all references to the accounts from consumers' credit reports. As a result of the agreement with Midland, the Division obtained a total of \$3,548,539.80 in cancelled debts for 3,536 West Virginia consumers.

4.

**IN THE MATTER OF INVESTIGATION OF THE COLLECTION
OF DEBTS BY BARRY SUSSMAN, CHARLES T. HUTCHINS, WAYNE KRAUSE,
ELIZABETH SUSSMAN AND CHECK INVESTORS, INC.
d/b/a NATIONAL CHECK CONTROL**

On August 30, 2005, the Division entered into an agreement with TeleCheck Services, Inc. (TeleCheck), a check guarantee company located in Houston, Texas, that resolved the Division's concerns regarding the collection of dishonored checks by the now-defunct collection agency, National Check Control (NCC), formerly of Secaucus, New Jersey. NCC had purchased thousands of dishonored checks from TeleCheck and attempted to collect on them.

The Division commenced an investigation of NCC in 2003 after receiving numerous complaints alleging that NCC was engaging in a wide range of abusive practices while attempting to collect these checks. On May 15, 2003, the Division sued NCC. During the hearing, the court enjoined NCC from collecting debts in West Virginia.

Subsequently, the Division asked TeleCheck, and TeleCheck agreed, to take certain actions for the benefit of West Virginia consumers aggrieved by the practices of NCC. Specifically, TeleCheck agreed to forgive the indebtedness allegedly owed by consumers and to notify the three major consumer reporting agencies to delete any information that TeleCheck may have reported about the checks. TeleCheck also agreed to refund any payments that consumers may inadvertently make to TeleCheck in connection with the checks it sold to NCC. As a result of this agreement, the Division obtained the cancellation of \$1,200,000.00 in debt owed by approximately 25,000 West Virginia consumers.

5.

IN THE MATTER OF GLOBAL HOLDING AND INVESTMENT COMPANY LLC

On August 22, 2005, the Division entered into an Assurance of Discontinuance with Global Holding and Investment Company LLC (Global) of Fairfield, New Jersey. Among other things, Global engaged in the purchase or charged-off consumer accounts for collection.

During its investigation of FWP, Inc., a company that sold and financed Filter Queen vacuum cleaners and Defender air purifiers (discussed elsewhere in this report), the Division learned that Global was collecting charged-off consumer accounts in West Virginia without a business license and surety bond as required by the state tax department. All of the accounts that Global was collecting originated from sales by FWP that were financed by its sister company, GAAC, a consumer lender based in Valenzia, Pennsylvania. After consumers defaulted on the accounts, GAAC bundled them into a portfolio and sold them for collection to Global.

In the assurance, Global agreed to stop collecting debts from West Virginia consumers unless it obtains the required license and surety bond. Global also agreed to close all of the accounts it had purchased from GAAC with a zero balance and to notify the three major credit bureaus to delete all references to the accounts from consumers' credit records. Under the terms of the assurance, the Division obtained a total of \$578,899.63 for 230 West Virginia consumers.

6.

**IN THE MATTER OF AQUION PARTNERS, LP
MANUFACTURER/DISTRIBUTOR OF RAINSOFT WATER TREATMENT SYSTEMS**

On March 3, 2003, the Division settled with Aquion Partners, LP (Aquion), the manufacturer of RainSoft water treatment systems. The agreement with Aquion offered full refunds and debt cancellation to all consumers who had purchased RainSoft Systems from Advanced Water Solutions, Inc. and The Only Way Water Treatment Company f/k/a CURE Water Treatment, Inc. if they filed a complaint with the Division by September 5, 2003.

During the current year, consumers received \$131,244.44 in cash refunds, \$400,921.94 in debt cancellation, and \$15,000.00 in value received. The total settlement value during this reporting period was \$547,166.38.

7.

IN THE MATTER OF DEBT MANAGEMENT CREDIT COUNSELING CORP.

On October 3, 2005, the Division entered into an Assurance of Discontinuance with Debt Management Credit Counseling Corp. (DMCC), a business located in Boca Raton, Florida that provides credit counseling and develops debt management plans for financially strapped consumers. The Division commenced an investigation of DMCC after receiving a complaint indicating that the company was charging fees for its services in excess of the amount permitted by West Virginia law. West Virginia's debt pooling statute prohibits nonprofit corporations, like DMCC, from charging more than seven percent of the total amount of money actually deposited by consumers into their debt management plans. See W. Va. Code § 61-10-23 et seq.

In the assurance, DMCC promised to comply with West Virginia's debt pooling statute in its future business practices and to eliminate all mandatory arbitration provisions in its contracts that require consumers to waive their rights under the Act. In addition, DMCC agreed to refund all excess fees and charges that it collected from consumers from the time it first commenced doing business in West Virginia. DMCC refunded \$91,739.53 to 230 consumers and paid \$1,000.00 to the State.

8.

**IN THE MATTER OF NORVERGENCE, INC. AND LYON FINANCIAL SERVICES, INC.
d/b/a U.S. BANCORP BUSINESS EQUIPMENT FINANCE GROUP**

On May 17, 2005, the Attorney General joined 17 other states in settling with Lyon Financial Services, Inc. d/b/a U.S. Bancorp Business Equipment Finance Group (Lyon), a company that had purchased millions of dollars in debts that originated from a telecommunications scam. Beginning in 2003, NorVergence, Inc. began promising small businesses, churches, and other customers savings of 35% or more on their phone bills, including discounts on wireless services, if they agreed to rent a special matrix device. The matrix device cost between \$400.00 and \$5,700.00 a month. Moreover, the rental contracts obligated customers to pay for the matrix boxes, even if NorVergence went out of business. Unbeknownst to consumers, the matrix was a garden-variety piece of office equipment, worth as little as \$500.00, that had nothing to do with the price of the phone service.

After defrauding its customers, NorVergence quickly sold the inflated rental contracts to several finance companies, including Lyon. After extensive negotiations,

Lyon agreed to forgive 85% of balances owed by customers. West Virginia consumers received \$54,454.00 in debt cancellation.

9.

IN THE MATTER OF KEIS WHITLEY d/b/a KIRBY OF BECKLEY/ K&J DISTRIBUTING

In the spring of 2005, the Division entered into agreements to resolve consumer complaints arising from the sale and financing of Kirby vacuum cleaners (Kirbys) by the now-defunct Keis Whitley d/b/a Kirby of Beckley/K&J Distributing (Whitley). The Division commenced an investigation of Whitley after receiving numerous complaints from consumers and former employees indicating that Whitley was inducing consumers to purchase Kirbys by promising to enter them into a non-existent sweepstakes. After the Division brought this matter to the attention of The Kirby Company, it terminated Whitley's distributorship.

When Whitley refused to resolve consumers' complaints, the Division asked assignee lenders to resolve the complaints for the sales they had financed. The three lenders, Preferred Credit, Inc., United Consumer Financial Services Company, and MAJR Financial Corporation agreed to resolve all complaints arising from the sales that they financed.

As a result of these agreements, the Division secured \$24,131.74 in cash refunds, \$21,476.06 in cancelled debt, and \$5,750.00 in value received. The total value of this settlement is \$51,357.80.

10.

**IN THE MATTER OF NATIONAL WARRANTY INSURANCE RISK RETENTION
GROUP d/b/a NATIONAL WARRANTY INSURANCE COMPANY AND NATIONAL
WARRANTY INSURANCE GROUP
(Case No. 03-42145 - U.S. Bankr. D. Nebraska)**

In August 2003, the Attorney General opened an investigation into the business activities of National Warranty Insurance Risk Retention Group (National Warranty), a Nebraska corporation. National Warranty offered an extended motor vehicle warranty under the names Independent Warranty Management Corporation (IWMC) and Smart Choice. These warranties were sold by new and used car dealers throughout West Virginia to consumers when they purchased vehicles. Consumers complained that when they attempted to use their warranties, the dealer told them the warranties were no longer valid.

In June 2003, National Warranty filed Chapter 11 bankruptcy and the business was placed in liquidation. As a result, the Division has been seeking restitution from the car dealers and from assignee lenders. During this reporting period, 42 consumers received refunds totaling \$26,438.51.

11.

IN THE MATTER OF DAVID J. RICH AND FWP, INC.

On June 28, 2005, the Division entered into an Assurance of Discontinuance with FWP, Inc. and its owner, David J. Rich, of Bridgewater, Pennsylvania. FWP engages in the distribution, sale, and financing of Filter Queen vacuum cleaners. The Division commenced an investigation of FWP after receiving complaints that the company and its

dealers did not have licenses to do business in West Virginia and were not giving consumers notice of their three day right to cancel.

Under the terms of the assurance, FWP agreed to comply with West Virginia law in its future business practices. FWP also agreed to rescind the sale for all consumers who filed complaints with the Attorney General, resulting in \$11,838.84 in cash refunds and approximately \$3,157.84 in cancelled loan obligations. FWP also paid the State \$5,000.00. The total settlement value was \$19,996.68.

12.

**IN THE MATTER OF PILOT FINANCIAL SERVICES COMPANY
AND SARASOTA CCM, INC.**

On May 3, 2005, the Division entered into an Assurance of Discontinuance with Pilot Financial Services Company (Pilot), a collection agency based in Blair, Nebraska and Sarasota CCM, Inc. (Sarasota), a collection agency based in Miramar Lakes, Florida. The investigation disclosed that Pilot was collecting delinquent accounts purchased by Sarasota and that neither company had obtained licenses to collect debts in West Virginia. As a result of the assurance, both companies agreed to obtain licenses to collect debts in West Virginia, to cancel consumers' debts in the amount of \$10,229.74 and to pay \$2,500.00 each. The total settlement value is \$15,229.74.

13.

IN THE MATTER OF STATE FARM MUTUAL INSURANCE COMPANY

On January 10, 2005, the Division, 48 other states, and the District of Columbia entered into an Assurance of Discontinuance with State Farm Mutual Insurance Company

(State Farm). After conducting an internal audit, State Farm discerned it had declared approximately 30,000 to 40,000 vehicles as total losses, but did not issue properly branded titles for the cars. In most states, when insurance companies take ownership of vehicles that have been declared total losses, they must obtain titles such as “salvage” and “reconstructed.” This brand provides notice to any subsequent purchaser that the vehicle has sustained major damage and that it is not worth as much as a similar car with an unbranded title.

Under the terms of the settlement, State Farm agreed to pay \$40,000,000.00 to consumers who purchased vehicles that should have had, but did not have, branded titles. In order to locate consumers, State Farm worked with the departments of motor vehicles across the country to identify the current owners of the subject vehicles and offer them a payment representing the reduced value of their car. Payments are expected to be sent to the affected consumers in late 2005 or early 2006. State Farm also agreed to pay \$1,000,000.00 to the participating states. West Virginia’s share of this money was \$15,000.00.

14.

IN THE MATTER OF THE INVESTIGATION OF BRIDGET A. ERVIN, JOHN R. ERVIN AND JACQUELYN B. WHITE d/b/a ERVIN AUTO SALES

On May 6, 2004, the Division opened its investigation into the business practices of Bridget A. Ervin, John R. Ervin and Jacquelyn B. White d/b/a Ervin Auto Sales (Ervin). Ervin is a “buy here–pay here” car lot located in Elkins, West Virginia. The investigation was opened after a consumer complained that Ervin had added charges for repairs to the consumer’s car loan. Further investigation revealed that Ervin’s Buyers Guide violated

the implied warranty of merchantability and that its loan contracts did not contain the disclosures required by the Truth in Lending Act, 15 U.S.C. 1638 and Regulation Z, 12 C.F.R. § 226.18.

On December 20, 2004, Ervin entered into an Assurance of Discontinuance with the Attorney General wherein it agreed to cease its unlawful practices and to pay consumer restitution in the amount of \$10,000.00. Subsequently, the Division received a similar complaint for which Ervin was required to pay an additional \$2,987.00 in consumer restitution. The total value of the settlement was \$12,987.00.

15.

IN THE MATTER OF BLOCKBUSTER, INC.

On January 1, 2005, Blockbuster, Inc. embarked on an advertising campaign entitled "The End of Late Fees/No Late Fees." On March 29, 2005, the Attorney General, along with 46 other states, entered into an Assurance of Discontinuance with Blockbuster. The assurance alleged that the advertising program was misleading because it failed to clearly and conspicuously disclose that a consumer would be charged the cost of the item if he rented a video or game from Blockbuster and failed to return the item within seven days after its return due date. If the consumer subsequently returned the item, the charge for the merchandise was removed from his account, but he was still charged a "restocking" fee of \$1.25. The settlement required Blockbuster to clearly and conspicuously disclose this policy in its stores and to pay the states a total of \$630,000.00. West Virginia's portion of the settlement was \$12,508.23.

16.

IN THE MATTER OF MONTCROFT FARMS

In 2004, the Division received a complaint from Bill Grose, a small potato farmer, who operates Montcroft Farms in Terra Alta, West Virginia. West Virginia University (WVU) had contacted Montcroft Farms and asserted that the farm logo used on his potato bags was similar to the WVU trademark for the University. WVU had asked that Grose cease and desist using the logo. As a result of the Division's intervention, WVU agreed to allow Grose to use up his current inventory of bags worth approximately \$16,600.00* and to reimburse Grose the \$12,420.00 in costs he spent on creating printing plates with the new graphic design.

17.

IN THE MATTER OF PREMIUM PRE-OWNED AUTO, INC.

In 2004, the Division received several complaints that Premium Pre-Owned Auto, Inc. (Premium), a used car dealer located in Hurricane, West Virginia, failed to make promised repairs on vehicles it sold, refused to honor warranties, and failed to deliver titles to consumers.

On December 14, 2004, the investigation culminated in an Assurance of Discontinuance between the Division and Premium. The agreement stated that Premium would provide restitution for consumers who complained to the Division. To date, Premium has paid \$11,433.65 in restitution and has voluntarily ceased doing business.

18.

**IN THE MATTER OF LARUE CAUSEY
d/b/a FOUR SEASONS SIDING AND WINDOWS**

On January 4, 2005, the Attorney General entered into an Assurance of Discontinuance with LaRue Causey d/b/a Four Seasons Siding and Windows Company (Four Seasons), located in St. Albans, West Virginia. On November 8, 2004, the Division issued an investigatory subpoena to Four Seasons after receiving several consumer complaints against the company. When Four Seasons failed to answer the subpoena, the Attorney General was forced to file a petition to enforce it in the Circuit Court of Kanawha County. Subsequently, Four Seasons entered into an Assurance of Discontinuance.

In the assurance, Four Seasons agreed to comply with the Act, repair or replace the defective windows of consumers who had filed a complaint with the Division, and to honor all future complaints of consumers in a timely manner. During this reporting period, the State received \$8,428.36 in consumer restitution and \$500.00 for consumer protection education purposes. The total value of the settlement is \$8,928.36.

19.

IN THE MATTER OF JOSE LLC d/b/a BATH FITTER LLC

On April 18, 2005, the Attorney General entered into an Assurance of Discontinuance with Jose LLC d/b/a Bath Fitter LLC, a Hurricane, West Virginia home improvement contractor. Consumers complained that the contractor failed to complete work for which it had been paid or that the work was substandard. In the assurance, the

business agreed to refund one consumer \$1,100.00 and to complete the work for four other consumers valued at \$6,850.00. The total value of the settlement is \$7,950.00.

20.

**IN THE MATTER OF SAMER KALE AND HASSAN C. KANAAN
d/b/a TWIN CITY USED CARS LLC**

On May 19, 2005, the Division entered into an Assurance of Discontinuance with Samer Kale and Hassan C. Kanaan d/b/a Twin City Used Cars LLC (Twin City) a used car dealer in Nitro, West Virginia. The Division commenced an investigation of Twin City after receiving complaints that the company was engaging in a wide range of violations of the Act, including selling vehicles “as is,” selling vehicles on credit without properly disclosing all the terms and conditions of the financing, failing to create a valid security interest in vehicles it sold on credit, repossessing vehicles without providing consumers with notice of their right to cure default, charging consumers late fees in excess of \$15.00, and hiring unlicensed persons to repossess its vehicles. In the assurance, Twin City agreed to pay \$7,500.00 to the State.

21.

**IN THE MATTER OF TV RETAILS, INC.
d/b/a AS SEEN ON TV, AND ABDUL HAFEZ YASIR**

In 2004, the Division began receiving complaints against As Seen on TV, a store located at the Town Center Mall, Charleston, West Virginia. As Seen on TV was owned and operated by TV Retails, Inc. and its owner, Abdul Hafez Yasir (TV Retails), of Totowa, New Jersey. The store was selling low-cost, gasoline-powered motor scooters that had significant defects. Consumers complained the scooters fell apart soon after

purchase. When consumers requested repairs or replacements, TV Retails stated it had a “no refunds” policy. The Division contacted TV Retails and it agreed to correct defects in all products it sold, to stop disclaiming implied warranties, and to pay \$6,020.35 for consumer restitution and education.

22.

IN THE MATTER OF TED W. SOLARI, M.D. d/b/a PEDIATRIC CARE UNLIMITED, INC.

On December 14, 2004, the Division entered into an Assurance of Discontinuance with Ted W. Solari, M.D. d/b/a Pediatric Care Unlimited, Inc. (Pediatric Care) of Beckley, West Virginia. The Division was prompted to investigate Pediatric Care after receiving complaints that the company was adding debt collection fees to allegedly delinquent account balances and was also charging “no show fees” to West Virginia Medicaid recipients.

In the assurance, Pediatric Care agreed to stop adding debt collection fees to delinquent account balances and charging “no show fees” if the consumer’s insurance was Medicaid. Pediatric Care also agreed to issue refunds and account credits to all consumers from whom it collected such charges. As a result of this action, the Division obtained a total of \$6,000.00 in refunds and account credits for approximately 500 consumers.

23.

IN THE MATTER OF BIG SANDY FURNITURE, INC. AND 50% CASH BACK, INC.

In December, 2003, the Division began receiving complaints from consumers who had purchased products at Big Sandy Furniture, Inc., based upon the promise of a 50%

rebate ten years after their purchases. These consumers made purchases in 1993, mailed in their rebate certificates, and had not received their rebates.

Big Sandy agreed to pay West Virginia consumers the rebates they were due in the form of a gift card for consumers who lived in Big Sandy's sales area and in the form of a check for consumers who did not. Consumers received \$5,368.71 in restitution this year. The total amount consumers received under the settlement is \$76,698.76*.

24.

IN THE MATTER OF ROBERT SHULTZ AND SUMMERON LLC d/b/a KIRBY HOME CARE CENTER

On October 26, 2005, the Division entered into an Assurance of Discontinuance with Robert Shultz and Summeron LLC d/b/a Kirby Home Care Center (Shultz), a distributor of Kirby vacuum cleaners based in Barboursville, West Virginia. The Division commenced a new investigation of Shultz after receiving a complaint alleging that Shultz was exploiting unsophisticated consumers. Shultz was attempting to sell these consumers new Kirby vacuum cleaners when he knew or should have known that these consumers had purchased a Kirby vacuum cleaner within the past year. Further investigation disclosed that Shultz was cleaning and reconditioning repossessed Kirbys and selling them as "new" to unsuspecting consumers. Shultz also failed to register his trade name "Kirby Home Care Center" with the West Virginia Secretary of State.

In the assurance, Shultz agreed to conform his sales practices to comply with the Act. Shultz also agreed to refrain from selling a Kirby vacuum to any consumer who had purchased a Kirby within the last five years, unless the consumer provided a dated statement in their own handwriting explaining their reasons for purchasing another Kirby.

In addition, Shultz agreed to pay \$5,000.00 to the State to be used for consumer protection and education purposes.

25.

**IN THE MATTER OF SHELBY RIFE AND S&M USED
AUTOMOBILES AND MOBILE HOME SALES, INC.**

On May 13, 2005, the Division entered into an Assurance of Discontinuance with Shelby Rife and S&M Used Automobiles and Mobile Homes Sales, Inc. (Rife) of Bluefield, West Virginia. The Division commenced an investigation of Rife after receiving a complaint alleging that the company was selling used mobile homes with significant defects “as is” in violation of the implied warranty of merchantability.

In the assurance, Rife agreed that it would refrain from selling used mobile homes “as is” in the future. Rife also agreed that it would conduct a home placement evaluation as required by the West Virginia Division of Labor before the sale of a mobile home was final. In addition, Rife agreed to pay \$4,000.00 to the State to be used for consumer protection and education purposes.

26.

IN THE MATTER OF PEGGY PFOST d/b/a PJ's USED AUTO SALES

On March 3, 2005, the Division entered into an Assurance of Discontinuance with Peggy Pfof d/b/a PJ's Used Auto Sales (PJ's), a “buy here—pay here” used motor vehicle dealer located in Bruceton Mills, West Virginia. The Division commenced an investigation of PJ's after receiving complaints alleging that the company was engaging in a wide range of consumer protection violations, including selling used motor vehicles “as is”,

failing to disclose the terms and conditions of financing in credit sales, failing to create a valid security interest in vehicles that it sold on credit, repossessing vehicles without first providing consumers with notice of their right to cure default, and misleading consumers about the terms and conditions of service contracts. In the assurance, PJ's promised to comply with the Act and agreed to pay \$3,500.00 to the State to be used for restitution and consumer education purposes.

27.

**IN THE MATTER OF PETER R. WHARTON d/b/a
WHARTON'S AMOCO AND USED CARS**

On October 6, 2005, the Division entered into an Assurance of Discontinuance with Peter R. Wharton d/b/a Wharton's Amoco and Used Cars (Wharton's), a used car dealer located in Wheeling, West Virginia. The Division commenced an investigation after receiving a complaint that the company was selling vehicles "as is" and was not giving consumers accurate odometer disclosures. Under the terms of the assurance, Wharton's promised to comply with the Act in its future business practices and to pay \$3,000.00 in restitution.

28.

IN THE MATTER OF ROBERT HORTON AND HORTON CONSTRUCTION

In September 2005, the Division opened an investigation of Horton Construction and its owner, Robert Horton, (Horton) of Poca, West Virginia, based on complaints from consumers that Horton did not complete home improvement jobs and refused to repair defects that consumers discovered soon after the jobs were done. Horton signed an

Assurance of Discontinuance whereby he promised to honor all terms and agreements in his contracts, and to also remedy any complaints from consumers within seven to fourteen days after being notified of the problem. Horton also agreed to pay \$2,654.13 in restitution and fines.

29.

IN THE MATTER OF DUKE LINZY d/b/a ALL CLEAN SEPTIC TANK SERVICE

In September 2004, the Division began investigating Duke Linzy d/b/a All Clean Septic Tank Service (All Clean) of Charleston, West Virginia after receiving numerous complaints from consumers. The consumers alleged that All Clean took money from them to diagnose septic system problems and perform repair services, but left jobs either incomplete or with serious defects in workmanship. When consumers contacted All Clean for followup repairs, they were ignored. When All Clean refused to comply with the Division's investigative subpoena, the Division filed a petition to enforce it in the Circuit Court of Kanawha County. Subsequently, All Clean entered into an Assurance of Discontinuance under which it agreed to honor all agreements entered into with consumers in a timely fashion and to remedy all complaints within seven to fourteen days after being notified of problems by a consumer. All Clean also agreed to pay \$2,650.00 in restitution.

30.

IN THE MATTER OF VIRGIL PYLES AND SWAT EXTERMINATING, INC.

On August 8, 2005, the Division entered into an Assurance of Discontinuance with Virgil Pyles and SWAT Exterminating, Inc. (SWAT) of Barboursville, West Virginia. The

Division commenced an investigation of SWAT after receiving complaints that the company was engaging in a wide range of violations of the Act, including failing to give consumers notice of their three day right to cancel, failing to disclose the terms and conditions of financing in writing, and collecting or representing that it may collect late fees or other debt collection fees or charges for services rendered.

In the assurance, SWAT agreed to conform all of its sales and financing practices with the Act. SWAT also agreed to pay \$2,500.00 to the State to be used for consumer protection and education purposes. Finally, SWAT agreed to dismiss with prejudice a civil action it had filed against a consumer who had allegedly failed to pay his bill.

31.

IN THE MATTER OF PRUDENCE USED AUTO SALES, INC.

On October 13, 2005, the Attorney General entered into a second Assurance of Discontinuance with Prudence Used Auto Sales, Inc. (Prudence) of Oak Hill, West Virginia. The Division began an investigation of Prudence based on a consumer complaint that a used motor vehicle would not start within days after it was purchased. Under the terms of the assurance, Prudence agreed to comply with the Act and pay \$2,031.45 in restitution.

32.

IN THE MATTER OF INDEPENDENT MARKETING, INC.

On April 5, 2005, the Division entered into an Assurance of Discontinuance with Independent Marketing, Inc. (Independent), a Utah corporation. Independent sells correspondence courses and failed to honor the consumer's right to cancel the course.

Under the terms of the assurance, Independent agreed to comply with all provisions of the Act and to provide refunds to consumers who exercise their right to cancel. Independent also paid \$2,000.00 to be used for consumer education purposes.

33.

**IN THE MATTER OF MPIS, INC.
d/b/a MAGNUM PI SERVICES, INC. AND JODY LEATHERMAN**

In March of this year, the Division began an investigation of MPIS, Inc. d/b/a Magnum PI Services, Inc. and its president, Jody Leatherman (Leatherman) of Keyser, West Virginia, concerning Leatherman's operation of an online detective agency. The Division received complaints that consumers paid Leatherman in advance for services he never provided. Leatherman entered into an Assurance of Discontinuance whereby he agreed to honor his transactions with consumers in a timely manner, as well as remedy future complaints within a reasonable time frame. Leatherman was also required to pay \$1,211.97 to be used for restitution and consumer education.

34.

IN THE MATTER OF JOHN HOWARD OPB & GMC, INC.

In October 2004, the Division received a copy of an advertisement placed by John Howard OPB & GMC, Inc., a Pennsylvania car dealership. The advertisement was published in the October 17, 2004 edition of the *Dominion Post* in Morgantown, West Virginia. The fine print of the advertisement deducted a hypothetical trade-in value of \$3,000.00 off the price of the car. Consequently, the large print figure that appeared to be the price of the vehicle was really \$3,000.00 less than the actual price. In December

2004, John Howard OPB & GMC, Inc. entered into an Assurance of Discontinuance that required it to cease the publication of its misleading and deceptive advertisements and to pay \$1,000.00 for consumer education purposes.

35.

**IN THE MATTER OF ASIA BROADWAY d/b/a
BROADWAY PAVING AND SEAL COATING**

On October 12, 2004, the Division received a consumer complaint against Asia Broadway d/b/a Broadway Paving and Seal Coating (Broadway), a Maryland company. The consumer paid Broadway a down-payment of \$1,250.00 to pave his driveway. Broadway did not complete the job. Thereafter, the Division discovered Broadway was not licensed to do business in West Virginia. On May 31, 2005, Broadway entered into an Assurance of Discontinuance requiring Broadway to pay \$800.00 restitution to the consumer and to obtain all necessary licenses prior to doing any further business in West Virginia.

36.

**IN THE MATTER OF B&H VINTAGE SALES
d/b/a CRAZY DOG CONSIGNMENT d/b/a ANDREW'S UNIQUE ANTIQUES
AND ELIZABETH A. HICKOK**

In January 2005, the Division began receiving complaints against B&H Vintage Sales d/b/a Crazy Dog Consignment d/b/a Andrew's Unique Antiques, and its owner Elizabeth A. Hickok (B&H), who was running a consignment shop in South Charleston, West Virginia. According to complaints, B&H represented that it would make consigned goods available for sale both in its storefront and on Internet auctions and promised

consumers up to 80% of sales proceeds. After consumers left their goods with B&H for sale, Hickok could not be reached and the store was frequently closed.

After investigating consumers' claims, the Division learned that many items were sold or otherwise disposed of without consumers' knowledge and without any distribution of the profits. On August 8, 2005, B&H entered into an Assurance of Discontinuance whereby it promised to honor all agreements with West Virginia consumers and resolve any future complaints within fourteen days after being notified of problems by the consumer. The Division also required B&H to relinquish the goods in its possession so the items could be returned to their owners. These goods were valued at approximately \$700.00.

37.

IN THE MATTER OF LEE CONRAD d/b/a AFFORDABLE SELF-STORAGE

On September 3, 2005, the Division entered into an Assurance of Discontinuance with Lee Conrad d/b/a Affordable Self-Storage (Affordable Self-Storage) of Nitro, West Virginia. The Division commenced the investigation of Affordable Self-Storage after receiving a consumer complaint that the company was not complying with the Self-Service Storage Lien Act, W. Va. Code § 38-14-1 et seq. In the assurance, Affordable Self-Storage promised to comply with the Self-Service Storage Lien Act in the future and also paid \$500.00 as restitution to consumers who were aggrieved by the company's practices.

38.

IN THE MATTER OF SPERRY DRILLING, INC.

The Division began an investigation of Sperry Drilling, Inc. (Sperry) of Berlin, Pennsylvania, based on a consumer complaint that Sperry was charging 1.5% per month debt collection fee on accounts that were late. Sperry entered into an Assurance of Discontinuance that required the business to comply with all provisions of the Act and to refrain from adding any illegal debt collection fees to its invoices in the future. In addition, Sperry paid \$500.00 for consumer restitution and consumer education.

39.

**IN THE MATTER OF MARIZA A. LIRIO, M.D.
d/b/a CRAB ORCHARD MEDICAL CLINIC**

On September 28, 2005, the Division entered into an Assurance of Discontinuance with Mariza A. Lirio, M.D. d/b/a Crab Orchard Medical Clinic of Crab Orchard, West Virginia. The Division commenced an investigation of Crab Orchard Medical Clinic after receiving a complaint that the company was adding a wide range of unlawful debt collection fees, designated as “administrative rebilling fees” and “interest fees” to allegedly delinquent accounts. In the assurance, Crab Orchard Medical Clinic promised to refrain from charging debt collection fees or adding interest to consumers’ account balances. The company also agreed to give 45 consumers approximately \$493.11 in refunds.

40.

**IN THE MATTER OF B&B SERVICE CENTER, INC. d/b/a
YAMAHA/JOHN DEERE OF SISSONVILLE**

On September 15, 2005, the Division entered into an Assurance of Discontinuance with B&B Service Center, Inc. d/b/a Yamaha/John Deere of Sissonville, West Virginia (B&B). The Division commenced an investigation of B&B Service Center after receiving a complaint that the company was adding a “surcharge” to the purchase price of goods when consumers charged the purchases to personal credit cards, such as VISA or MasterCard. This practice is generally prohibited by the contracts entered into between merchants and credit card banks. In the assurance, B&B promised to refrain from adding surcharges to the purchase price of goods charged to consumers’ credit cards. In addition, B&B refunded surcharges totaling \$428.40.

41.

IN THE MATTER OF BUICK-PONTIAC-GMC OF MORGANTOWN, INC.

In November 2004, Buick-Pontiac-GMC of Morgantown, Inc. entered into an Assurance of Discontinuance that it would no longer engage in deceptive and misleading advertising practices. The company published an advertisement in the August 21, 2004 edition of the *Dominion Post* in Morgantown, West Virginia. The small print of the advertisement deducted a hypothetical trade-in value of either \$2,000.00 or \$2,500.00 off the price of the car. The number in large print purporting to be the true price of the car included this price reduction. In December 2004, Buick-Pontiac-GMC of Morgantown, Inc. paid the State \$375.00 to be used for consumer education.

42.

IN THE MATTER OF PATTY GEMMILL d/b/a STARSIGN FARM

On January 24, 2005, the Attorney General entered into an Assurance of Discontinuance with Patty Gemmill d/b/a Starsign Farm (Starsign) of Charles Town, West Virginia. Starsign is a breeder of Papillon dogs. The Division began an investigation after receiving a complaint that Starsign was selling the dogs “as is.” In the assurance, Starsign agreed to delete the “as is” language from its contract and to honor both express and implied warranties. Starsign also agreed to pay the State \$500.00* for consumer education purposes. The State has collected \$100.00 during this reporting period.

43.

**IN THE MATTER OF BRIAN D. GRIFFITH AND GRIFFITH INVESTMENTS, INC.
d/b/a HEALTHY INSPIRATIONS OF CHARLES TOWN AND MARTINSBURG**

On April 6, 2005, the Division entered into an Assurance of Discontinuance with Brian D. Griffith and Griffith Investments, Inc. d/b/a Healthy Inspirations of Charles Town and Martinsburg (Healthy Inspirations), a private weight loss club headquartered in Woodstock, Virginia with offices in Charles Town and Martinsburg, West Virginia. The Division commenced an investigation of Healthy Inspirations after receiving a complaint that the company was engaging in a wide range of violations of the Act, including operating without a business license and disseminating advertisements that falsely represented to consumers that it was conducting a scientific study about child obesity when, in fact, it was simply selling expensive memberships to a private weight loss club.

Healthy Inspirations agreed to provide refunds and cancel all remaining debt obligations for all consumers who were unlawfully induced to purchase memberships in

its club. To date, Healthy Inspirations has failed to honor its obligations under the assurance.

44.

**IN THE MATTER OF EVERGLADES DIRECT, INC.
d/b/a EMPLOYER COMPLIANCE SERVICES**

On August 12, 2005, the Division entered into an Assurance of Discontinuance with Everglades Direct, Inc. d/b/a Employer Compliance Services (Everglades), a Florida corporation. Everglades sells posters for \$54.95 that notify employees of state and federal laws on employee rights and safety. Moreover, Everglades' posters gave the impression that Everglades was affiliated with or was a governmental entity. Similar posters are available free of charge from state or federal agencies, such as the West Virginia Bureau of Employment Programs, and are required by state and federal law to be displayed at the workplace.

The agreement provided that in all future mail solicitations, Everglades must include disclosures indicating that it is a non-governmental entity and that the posters are available for free from the West Virginia Bureau of Employment Programs. The settlement further required that Everglades offer a refund to all poster purchasers by October 15, 2005, and to provide a report to the Attorney General detailing the amounts refunded.

C.

ANTITRUST DIVISION

The Antitrust Division of the Office of the Attorney General is under the same management as the Consumer Protection Division and is charged with the responsibility of enforcing the West Virginia Antitrust Act, W. Va. Code § 47-18-1 et seq. The purpose of the Antitrust Act is to prevent unreasonable restraints of trade, monopolies and attempts to monopolize trade. The Antitrust Division is staffed by one attorney and one paralegal. Under the Antitrust Act, the Attorney General is authorized to take legal action on behalf of the State and/or on behalf of its citizens to secure injunctive relief, restitution, civil penalties, damages, fees and costs. During this reporting period, the Antitrust Division secured \$5,097,957.34 for the State and its citizens.

ANTITRUST LITIGATION

1.

State ex rel. Darrell V. McGraw, Jr. v. Microsoft Corporation
(Civil Action No. 01-C-197 - Circuit Court of Boone County)

On December 3, 2001, Attorney General McGraw filed a lawsuit against Microsoft Corporation seeking damages caused to the State and its consumers because of Microsoft's unlawful antitrust activities. In this action, the State sought damages for governmental entities and consumers who had purchased the Windows 98 operating system.

In June 2003, the State reached a settlement with Microsoft Corporation. Under the terms of the settlement, Microsoft offered to pay up to \$18,000,000.00* in vouchers that consumers and businesses could redeem on computer hardware and software. The

deadline for obtaining the vouchers passed and the company delivered \$149,835.00 worth of vouchers to consumers and businesses during the reporting period. An additional \$1,000,000.00 in vouchers were given to public schools to purchase computer software and hardware and \$700,000.00 in vouchers were given to the Attorney General to use to benefit the State and its citizens. The total amount received during this reporting period was \$1,849,835.00.

2.

State ex rel. Darrell V. McGraw, Jr. v. Abbott Laboratories, et al. **(Civil Action No. 01-C-180 - Circuit Court of Wyoming County)**

On September 17, 2001, the Attorney General sued Abbott Laboratories and Geneva Pharmaceuticals, Inc. for conspiring to prevent the entry of generic Hytrin onto the market. Hytrin is a high blood pressure medication that is prescribed predominantly for benign prostatic dysplasia. The Attorney General alleged that Geneva could have started selling its generic equivalent of Hytrin in 1998, but did not do so until August 1999, because of an unlawful agreement between it and Abbott. In exchange for keeping its generic drug off the market, Geneva was paid \$4,500,000.00 per month by Abbott or about \$70,000,000.00 during the conspiracy.

Because of complicated federal drug laws, no other generic competitor to Hytrin could enter the market until after Geneva did. Therefore, generic competition did not enter the market until August 1999. Because of this unlawful agreement, consumers and government entities, such as Medicaid, paid far more for Hytrin and its generic equivalents than they would have absent the anti-competitive conduct. The State settled with Abbott and Geneva in March 2005. In July 2005, Abbott and Geneva paid the State

\$1,300,000.00. The consumer claims process closed in October 2005 and refunds will be distributed in the near future.

3.

State of Alabama, et al. v. Bristol-Myers Squibb Co., et al.
(Civil Action No. 01-CV-11401, MDL 1413 - U.S.D.Ct., Southern District of New York)

In December 2001, more than 25 states and territories filed suit against Bristol-Myers Squibb Co., Danbury Pharmacal, Inc. and Watson Pharma, Inc. (BMS) claiming that the companies had violated antitrust laws in marketing BuSpar, a widely prescribed anti-anxiety drug. The states alleged that BMS knowingly made false statements to federal government regulators regarding patents on its brand name drug in order to maintain its monopoly in violation of antitrust laws. BMS's false statement prevented generic competitors from entering the market.

In March 2003, the states and the defendants reached a settlement agreement whereby the defendants agreed to pay the states \$100,000,000.00.* The consumer claims process concluded at the end of 2003. West Virginia consumers received \$596,638.80.* During this reporting period, West Virginia received an additional \$1,168,914.72.

4.

State ex rel. Darrell V. McGraw, Jr. v. Warrick Pharmaceuticals Corporation, et al.
(Civil Action No. 01-C-3011 - Circuit Court of Kanawha County)

In October 2001, the State sued Warrick Pharmaceuticals Corporation, Dey, Inc., Abbott Laboratories, and Abbott Laboratories, Inc. claiming that the defendants purposely inflated their reported prices to First Data Bank, an information gathering company, which

allowed pharmacies to recover more money than they were entitled to from the government. The drugs involved in this lawsuit are Albuterol Sulphate, a common inhalant used for sufferers of asthma and other breathing difficulties, and Vancomycin, an intravenous antibiotic. Typically, drug companies report their wholesale prices to a data gatherer who then supplies the information to Medicaid so that it can set reimbursement levels on the prices of prescription drugs. The Division alleged that these companies submitted false prices to the data gatherer. This illegal conduct resulted in these three companies obtaining a larger market share for their drugs than their competitors.

One of the defendants, Dey, Inc. reached a settlement with the Attorney General in May 2004. Under the terms of the settlement, Dey, Inc. paid the State \$1,100,000.00.* The cases against the other two defendants have been scheduled for trial. The trial against Warrick is scheduled to start on November 29, 2005, and the trial against Abbott is scheduled for early summer of 2006.

5.

State of New York, et al. v. Aventis S.A., et al. **(Civil Action No. 99-MDL-1278 - U.S.D.Ct., Eastern District of Michigan)**

On May 14, 2001, West Virginia and 28 other states sued Aventis SA, Hoechst Aktiengesellschaft, Aventis Pharmaceuticals, Inc., Carderm Capital LP, and Andrx Corporation alleging that the defendants conspired with each other to prevent a generic form of Cardizem CD, Cartia XT, from entering the market. Cardizem CD is a highly profitable, brand-name drug for treatment of chronic chest pain and high blood pressure. In exchange, Andrx was paid nearly \$90,000,000.00 for delaying the sale of Cartia XT for approximately one year. Because of complicated federal laws and regulations, no other generic manufacturer could start to sell its drug until after Cartia XT came onto the

market. The states alleged that consumers and governmental entities, such as Medicaid, spent millions more than they would have if Andrx and other generic competitors to Cardizem CD had come onto the market earlier.

In December 2002, the states reached a settlement agreement with Aventis and Andrx whereby the defendants agreed to pay the states \$80,000,000.00. Preliminary approval of the settlement was granted in January 2003, and a claims process was established that gave consumers until November 15, 2003 to submit claims for reimbursements. During this reporting period, West Virginia received \$163,175.96 and consumers received \$605,246.94 in refunds. The total settlement value was \$768,422.90.

6.

State of Ohio, et al. v. The Hearst Corporation, et al. (Civil Action No. 1:05CV00384 - U.S.D.Ct., District of Columbia)

On February 25, 2005, West Virginia joined 49 states and the District of Columbia in filing a complaint and consent order against the Hearst Trust, the Hearst Corporation and First Databank, Inc. resolving allegations of antitrust conduct by the defendants.

The Hearst companies, including First Databank, Inc. had acquired J. B. Laughrey, Inc. and its related companies, Medi-Span, Inc. and Medi-Span International, Inc. in the late 1990s. Prior to the acquisition, First Databank and Medi-Span competed against each other to provide pharmaceutical pricing information to third-party payors such as Medicaid. After the acquisition, only First Databank remained. West Virginia alleged prices charged to third-party payors then increased.

In December 2001, Hearst entered into a consent decree with the FTC. Under the terms of the decree, Hearst agreed to sell off Medi-Span. To resolve the states'

complaint, Hearst agreed to pay \$925,000.00. West Virginia's share of the proceeds was \$10,000.00.

7.

Archer v. F. Hoffmann-LaRoche, Ltd., et al.
(Civil Action No. 99-C-327 - Circuit Court of Kanawha County)

In June 2001, Attorney General McGraw intervened in a pending lawsuit that alleged multi-national corporations producing and distributing vitamins and other vitamin products conspired to fix prices and allocate markets for vitamin products. Attorney General McGraw intervened in this lawsuit to implement a master settlement agreement reached among the manufacturers of vitamin products³ and West Virginia, 20 other states, Puerto Rico and the District of Columbia. Final approval of the West Virginia portion of the settlement was granted May 29, 2002 by the Circuit Court of Kanawha County.

Under the terms of the master settlement agreement, the six companies agreed to pay approximately \$187,000,000.00 nationwide. As previously reported, West Virginia's share of this settlement was \$1,946,874.49.* A residual distribution of \$784.72 was made to West Virginia during the reporting period.

³ The defendant manufacturers of vitamin products in Archer v. F. Hoffmann- LaRoche, Ltd., et al. were Hoffmann-LaRoche, Ltd., Roche Vitamins, Inc., BASF Corporation, Aventis Animal Nutrition, S.A., Eisai Co., Ltd., Daiichi Pharmaceutical Co., Ltd., and Takeda Chemical Industries, Ltd.

8.

State ex rel. Darrell V. McGraw, Jr. v. Acordia of West Virginia, Inc., et al.
(Civil Action No. 05-C-115W - Circuit Court of Hancock County)

After a five month investigation, the Attorney General sued Acordia, Inc. and Acordia of West Virginia, Inc. alleging violations of the Act and the Antitrust Act. Acordia, an insurance broker, acts as a middleman between a company wanting to purchase insurance and companies offering insurance policies. The suit alleged that Acordia failed to disclose the “backdoor” commissions that it received from its clients. Moreover, the State alleged that Acordia steered its customers to favored insurers because the insurers paid higher contingent commissions. Contingent commissions were paid, in part, based on the volume of business written by the broker and the profitability of the business written. The matter is pending.

9.

State ex rel. Darrell V. McGraw, Jr. v. Visa U.S.A., Inc., et al.
(Civil Action No. 03-C-551 - Circuit Court of Ohio County)

On October 27, 2003, Attorney General McGraw sued Visa U.S.A., Inc. and MasterCard International, Inc. alleging violations of the Act and the Antitrust Act. The lawsuit alleged that the companies used their market power with general purpose credit cards to force merchants to accept their branded debit cards. General purpose credit cards are widely used throughout the United States for making purchases on credit. Debit cards, on the other hand, are used in place of writing a check. The complaint further alleged that this unlawful tying arrangement forced retailers to increase prices on goods and services causing consumers to pay more for the items than they would have

absent the unlawful arrangement. In October 2005, the court denied the defendants' request to dismiss the action. The matter is pending.

D.

PRENEED FUNERAL UNIT

Attorney General McGraw's Preneed Funeral Unit is responsible for recording and regulating the sale, management, and execution of preneed funeral contracts. The Preneed Funeral Unit consists of an auditor, an administrative assistant, a part-time clerk, and a part-time lawyer.

There are currently 274 funeral homes and 33 cemeteries licensed to sell preneed funeral contracts. The Preneed Funeral Unit has two funded accounts. The West Virginia Preneed Regulation Fund (the Regulation Fund) was established to pay for the administration of the Preneed Funeral Unit and is funded by fees paid by consumers and funeral homes. The West Virginia Preneed Guarantee Fund (the Guarantee Fund) was established to serve as an insurance account to protect consumers in the event a funeral home is financially unable to fulfill its preneed contractual obligations. As of October 2005, the Regulation Fund had a balance of \$263,523.26 and the Guarantee Fund had a balance of \$716,990.40. During this reporting period, the Preneed Unit secured \$234,967.14 for the State and its citizens.

1.

PRENEED FUNERAL UNIT LITIGATION

a.

State ex rel. Darrell V. McGraw, Jr. v. Bartolo Funeral Home, Inc., et al.
(Civil Action No. 04-C-361-2 - Circuit Court of Harrison County)

In 2004, the Division filed a lawsuit in the Circuit Court of Harrison County against Bartolo Funeral Home, Inc. and its owner, James F. Bartolo (Bartolo) alleging that the funeral home had misappropriated funds paid by consumers on preneed funeral contracts. When Bartolo ceased doing business at his Clarksburg funeral home in 2003, the Preneed Funeral Unit began receiving complaints that the funeral director was refusing to refund money consumers had paid in advance for funeral services.

The Preneed Funeral Unit performed an audit that revealed there were 50 preneed funeral contracts that Bartolo had failed to report to the Division, and 26 instances where Bartolo had failed to report the withdrawal of consumers' money after servicing their contracts. The Division learned that instead of depositing consumers' funds in trust accounts, Bartolo had absconded with \$170,000.00 of the consumers' money. On July 30, 2004, the Division sued Bartolo seeking to freeze his assets and obtain restitution for all consumers. Bartolo agreed to settle the lawsuit by paying restitution and agreeing to be permanently enjoined from selling or servicing preneed funeral contracts.

Because Bartolo was insolvent, the Attorney General paid consumers \$149,218.39 from the Guarantee Fund. Currently, the Division is collecting monthly payments from Bartolo to reimburse the Guarantee Fund and the Preneed Unit has collected \$25,831.00 from Bartolo during this reporting period. The total settlement value was \$175,049.39.

b.

State ex rel. Darrell V. McGraw, Jr. v. Myers Funeral Home, Inc., et al.
(Civil Action No. 04-C-78 - Circuit Court of Kanawha County)

In 2003, Myers Funeral Home in Elkview, West Virginia and its owners, Frederick Arthur Myers, Jr. and Frederick Dale Myers (Myers), failed to abide by licensing and reporting requirements. The Division conducted an audit, and discovered seven preneed funeral contracts that the funeral home had failed to disclose to the Attorney General's office. Myers had also misappropriated over \$7,000.00 from one consumer.

After Myers ignored the Division's warning to correct all delinquencies, the Division sued Myers in the Circuit Court of Kanawha County to enjoin the funeral home from accepting any advance payments for funeral goods or services until such time as its operations were compliant with the Act. Myers finally agreed to settle the lawsuit by paying back \$8,078.36 in misappropriated funds, as well as \$5,500.00 in civil penalties. Myers also agreed to comply with all provisions of the Preneed Act in the future and to hire a third-party administrator to monitor its preneed activities for a period of two years. The total settlement value was \$13,578.36.

2.

PRENEED FUNERAL UNIT ASSURANCES OF DISCONTINUANCE

a.

IN THE MATTER OF IAMS FUNERAL HOME, INC.

In February 2005, an audit of Iams Funeral Home, Inc. in New Martinsville, West Virginia, and its president, John L. Iams, II (Iams), revealed that Iams had received prepayments for preneed funeral contracts and had failed to deposit these funds into trust

accounts. Iams had also failed to register 13 preneed funeral contracts with the Attorney General's office and had failed to account for 84 preneed funeral contracts that Iams had already serviced. The Attorney General's office required Iams to enter into an Assurance of Discontinuance whereby Iams agreed to comply with all reporting requirements in the future and pay \$7,620.00 in fees and penalties. Iams also opened trust accounts for all preneed funeral contracts.

b.

IN THE MATTER OF BROWN FUNERAL HOME, INC.

On February 8, 2005, the Division entered into an Assurance of Discontinuance with Brown Funeral Home, Inc. in Martinsburg, West Virginia, and its president, Charles M. Brown (Brown). An audit by the Preneed Funeral Unit revealed that Brown had sold at least 151 preneed funeral contracts and had not registered those contracts with the Attorney General or pay the required contract recording fees. Brown also failed to inform the Preneed Funeral Unit of at least 165 preneed funeral contracts it had already serviced. Under the terms of the assurance, Brown submitted all required filings and paid fees and costs totaling \$5,020.00.

c.

IN THE MATTER OF KELLER FUNERAL HOME, INC.

An audit revealed that Keller Funeral Home, Inc. (Keller) located in Dunbar, West Virginia sold at least 52 preneed funeral contracts but did not report the transactions to the Preneed Funeral Unit or pay the contract recording fees. Keller also failed to inform the Attorney General of at least 181 preneed funeral contracts it had serviced previously.

On May 26, 2005, the Division required Keller and its president, Catherine Whittington, to enter into an Assurance of Discontinuance. Under the terms of the assurance, Keller submitted all required filings and paid fees and costs totaling \$5,665.00.

d.

IN THE MATTER OF BASAGIC FUNERAL SERVICE, INC.

On January 12, 2005, the Division entered into an Assurance of Discontinuance with Basagic Funeral Service, Inc. (Basagic) and its president, David J. Basagic. A Preneed Funeral Unit audit revealed that Basagic sold at least 128 preneed funeral contracts to consumers without reporting the transactions to the Attorney General's office or paying the contract recording fees. Basagic also failed to submit accountings of withdrawals for at least 69 preneed funeral contracts it had already serviced. Under the terms of the assurance, Basagic submitted all required filings and paid \$5,100.00 in fees and costs.

e.

IN THE MATTER OF HELSLEY-JOHNSON FUNERAL HOME, INC.

An audit of Helsley-Johnson Funeral Home, Inc. located in Berkeley Springs, West Virginia and its president, Douglas C. Sensel, (Helsley-Johnson) revealed that Helsley-Johnson had received prepayments from several consumers for preneed funeral contracts, but failed to deposit funds in trust accounts as required by law. Helsley-Johnson also failed to register four preneed funeral contracts with the Attorney General's office and failed to pay the contract recording fees. Helsley-Johnson also did not report 3 preneed funeral contracts it had already performed. The Division required

Helsley-Johnson to enter into an Assurance of Discontinuance requiring the funeral home to comply with all reporting requirements in the future and pay \$4,969.00 in fees and penalties.

f.

IN THE MATTER OF ARNER FUNERAL CHAPEL, INC.

On September 12, 2005, the Division entered into an Assurance of Discontinuance with Arner Funeral Chapel, Inc. in Chester, West Virginia, and its president, Alvin L. Arner, III (Arner). An audit by the Preneed Funeral Unit revealed that Arner sold at least 48 preneed funeral contracts to West Virginia consumers without reporting the transactions to the Attorney General's office or paying the contract recording fees. Arner also failed to inform the Attorney General of at least 98 preneed funeral contracts it had previously serviced. Under the terms of the assurance, Arner submitted all required filings and paid fees and costs totaling \$4,710.00.

g.

IN THE MATTER OF ANDERSON FUNERAL HOME

On June 9, 2005, the Division entered into an Assurance of Discontinuance with Anderson Funeral Home in Moundsville, West Virginia, and its president, Jeffrey S. Anderson (Anderson). An audit by the Preneed Funeral Unit revealed that Anderson sold at least 11 preneed funeral contracts to consumers without reporting the transactions to the Preneed Funeral Unit or paying the contract recording fees. Anderson had also failed to inform the Attorney General of at least four preneed funeral contracts it previously serviced. The audit further revealed that Anderson had retained a 10% up front fee on 27

preneed funeral contracts without obtaining the consumers' written consent. Under the terms of the assurance, Anderson submitted all required filings, paid fees and costs totaling \$2,960.00, and agreed to reimburse the advance profit withholdings to consumers' trust funds over time.

h.

IN THE MATTER OF WIDENER FUNERAL HOME, INC.

On February 7, 2005, the Division entered into an Assurance of Discontinuance with Widener Funeral Home, Inc. in Northfork, West Virginia, and its president, James Widener, Jr. (Widener). An audit by the Preneed Funeral Unit revealed that Widener sold at least 43 preneed funeral contracts to consumers without submitting copies of the contracts and appropriate fees to the Attorney General's office. Widener also failed to report its withdrawals of consumers' funds for six preneed funeral contracts that it had previously serviced. Under the terms of the assurance, Widener submitted all delinquent filings and paid fees and costs of \$2,360.00.

I.

**IN THE MATTER OF TAYLOR-VANDALE FUNERAL HOME, INC.
d/b/a TAYLOR-VANDALE FUNERAL HOME AND MONUMENT COMPANY**

On October 21, 2005, the Division entered into an Assurance of Discontinuance with Taylor-Vandale Funeral Home, Inc. in Spencer, West Virginia, and its president, Richard Taylor (Taylor-Vandale). An audit by the Preneed Funeral Unit revealed that Taylor-Vandale sold at least 33 preneed funeral contracts to consumers without reporting the transactions to the Preneed Funeral Unit and did not pay the necessary contract recording fees. Taylor-Vandale also failed to account for at least 50 preneed funeral

contracts it had serviced over several years. Under the terms of the assurance, Taylor-Vandale submitted all required filings and paid fees and costs totaling \$2,160.00.

j.

IN THE MATTER OF J. E. JOHNSON FUNERAL HOME, INC.

On March 21, 2005, the Division entered into an Assurance of Discontinuance with J. E. Johnson Funeral Home, Inc. in Charleston, West Virginia, and its president, Joyce M. Johnson (Johnson). An audit by the Preneed Funeral Unit revealed that Johnson had failed to submit copies of at least seven preneed funeral contracts it sold to consumers and failed to pay contract recording fees. Johnson also did not submit death beneficiary reports for 86 preneed funeral contracts it had already serviced. Under the terms of the assurance, J. E. Johnson submitted all required filings and paid \$2,130.00 in fees and costs.

k.

IN THE MATTER OF STUMP FUNERAL HOMES, INC.

On November 30, 2004, the Division entered into an Assurance of Discontinuance with Stump Funeral Homes, Inc. in Grantsville, West Virginia, and its president, John S. Stump (Stump). An audit revealed that Stump had sold at least four preneed funeral contracts to West Virginia consumers without reporting the transactions to the Preneed Funeral Unit and did not pay the contract recording fees. Stump had also failed to inform the Attorney General of 46 preneed funeral contracts it had previously serviced. Under the terms of the assurance, Stump submitted all required filings and paid fees and costs totaling \$2,080.00.

I.

IN THE MATTER OF HUNTER-ANDERSON FUNERAL HOME

The Preneed Funeral Unit audited Hunter-Anderson Funeral Home (Hunter-Anderson), in Berkeley Springs, West Virginia in July 2005. The audit revealed that Hunter-Anderson sold at least two preneed funeral contracts to West Virginia consumers without reporting the transactions to the Preneed Funeral Unit and did not pay the contract recording fees. Hunter-Anderson also failed to submit accountings for at least 18 preneed funeral contracts it had previously serviced. The audit further revealed that Hunter-Anderson had retained a ten percent fee on a preneed funeral contract without securing the consumer's written consent to do so. The Division required Hunter-Anderson and its president, John A. Anderson, to enter into an Assurance of Discontinuance under which the funeral home submitted all required filings, paid fees and costs of \$590.00, and repaid \$975.39 in advance profits received to a consumer's trust fund. The total settlement value was \$1,565.39.

VI.

CONCLUSION

2005 was another successful year for the Consumer Protection and Antitrust Divisions in that they recovered \$88,305,405.52 for consumers and the State. Attorney General McGraw is pleased by this figure, but cautions the reader against too narrow a focus on it. Such a focus is natural – we grasp the tangible more quickly and securely than the intangible – and, in this, the world's greatest market economy, dollar signs draw the most attention. Attorney General McGraw believes that, substantial as it is, this particular dollar sign grossly undervalues his office's efforts.

How? First of all, many or most of the thousands of mediations conducted this year might have become lawsuits, increasing the expenses of both parties and clogging the State's overburdened courts with small claims.

Second, in several instances this past year, the Division was simply ahead of the curve, snuffing out incipient consumer abuse before it caused widespread damage. For example, the Division secured hundreds of thousands of dollars for consumers who were victims of abusive credit card practices, anti-competitive conduct by several multi-million dollar pharmaceutical companies, and fraudulent tactics of “buy here-pay here” car dealerships. The amount the exploiters of such practices might have fleeced from West Virginia consumers had the practices proliferated and become established can never be known.

Finally, there is a commodity with a value that utterly defies expression in dollars and cents: education. A consumer who learns how to protect himself is less likely to be harmed; a business that learns where the law draws its lines is less likely to transgress them. Thus, education is the linchpin of preventing consumer fraud and abuse in the first

place, with the happy dividend of reducing demand for mediation and litigation. Ideally, Attorney General McGraw would rather be a teacher of dispute avoidance than a player in dispute resolution. While that ultimate ideal is perhaps unattainable, all progress toward it benefits our State and citizens.

Respectfully submitted,

Darrell V. McGraw, Jr.
Attorney General

Exhibit 1

COMPARISONS

	2005	2004	2003	2002	2001	2000	1999	1998	1997	1996	1995
MEDIATION COMPLAINTS											
Complaints Received	8,683	9,143	8557	8,573	8,080	7,929	8,891	8,903	7,106	6,691	5,516
Complaints Closed	9,591	9,581	9511	8,934	8,572	8,342	9,830	8,007	7,252	5,858	4,809
Restitution	\$ 1,849,372.13	\$ 2,496,207.75	\$2,300,282.00	\$1,690,726.15	\$1,284,772.76	\$1,872,763.62	\$1,230,609.05	\$ 946,267.05	\$1,121,614.54	\$ 594,652.44	\$ 453,300.46
CONSUMER PROTECTION											
Litigation	\$62,912,498.42	\$58,404,584.00	\$71,225,894.80	\$66,170,098.77	\$61,684,366.53	\$51,179,434.48	\$ 963,570.47	\$ 413,924.83	\$ 1,710,739.92	\$ 932,192.90	\$ 128,252.95
Assurances	\$18,210,610.49	\$ 4,916,377.30	\$ 859,270.62	\$ 857,852.95	\$ 1,683,951.90	\$ 830,283.36	\$ 3,814,322.30	\$ 3,679,326.10	\$ 2,323,153.67	\$ 1,316,375.40	\$ 57,031.58
ANTITRUST											
Litigation Assurances	\$ 5,097,957.34	\$ 4,070,916.34	\$ 1,741,992.55	\$6,525,816.90	\$548,724.30	\$ 262,000.00	\$ 26,000.00	----	\$ 220,950.14	\$ 342,600.00	\$ 266,837.00
PRENEED FUNERAL UNIT											
Litigation Assurances	\$ 234,967.14	\$ 146,214.97	\$ 98,613.07	\$ 62,134.48	\$ 63,807.85	\$ 465,663.99	\$3,082,033.34	\$ 322,557.98	\$ 139,511.30	\$ 123,319.45	\$ 7,175.00
TOTAL											
RESTITUTION	\$88,305,405.52	\$70,034,300.36	\$76,226,053.04	\$75,306,629.25	\$65,265,623.34	\$54,610,145.45	\$9,116,535.16	\$5,362,075.96	\$5,515,969.57	\$3,309,140.19	\$ 912,596.99

2004 - 2005 COMPARISONS

2005		2004	2005-2004 Difference	%
MEDIATION COMPLAINTS				
Complaints received	8,683	9,143	-460	-5%
Complaints closed	9,591	9,581	10	.1%
Restitution	\$ 1,849,372.13	\$2,496,207.75	-646,835.62	-26%
CONSUMER PROTECTION				
Litigation	\$62,912,498.42	\$58,404,584.00	\$4,507,914.42	8%
Assurances	\$18,210,610.49	\$ 4,916,377.30	\$13,294,233.19	270%
ANTITRUST				
Litigation - Assurances	\$ 5,097,957.34	\$ 4,070,916.34	\$1,027,041.00	25%
PRENEED FUNERAL UNIT				
Litigation - Assurances	\$ 234,967.14	\$ 146,214.97	\$88,752.17	61%
TOTAL				
RESTITUTION	\$88,305,405.52	\$70,034,300.36	\$18,271,105.16	26%

CPD TOTAL COMPARISON WITHOUT TOBACCO

2004 Total	\$70,034,300.36		2004		2005	
2005 Total	\$88,305,405.52		Total	\$70,034,300.36	Total	\$88,305,405.52
	2004 Tobacco	\$58,005,977.90	Tobacco	-\$58,005,977.90	Tobacco	-\$56,511,981.22
	2005 Tobacco	\$56,511,981.22	Total without Tobacco	\$12,028,322.46	Total Without Tobacco	\$31,793,424.30

PERCENTAGE COMPARISON WITHOUT TOBACCO

2005	2004	2004-2005 DIFFERENCE	%
\$31,793,424.30	\$12,028,322.46	\$19,765,101.84	164%

Exhibit 2

CONSUMER PROTECTION AND ANTITRUST DIVISIONS
2005 Litigation and Assurances

Complaints Received	8,683
Complaints Closed	9,591
Mediation - Refunds, Debt Cancellation, Value Received	\$ 1,849,372.13
Consumer Protection Litigation	\$62,912,498.42
Consumer Protection Assurances	\$18,210,610.49
Antitrust Division	\$ 5,097,957.34
Preneed Unit	\$234,967.14
CONSUMER PROTECTION DIVISION TOTAL	\$88,305,405.52

CONSUMER PROTECTION LITIGATION

<u>Darrell V. McGraw, Jr., Attorney General, ex rel. State of West Virginia; the West Virginia Public Employees Insurance Agency; and the West Virginia Department of Health and Human Resources v. The American Tobacco Company, et al.</u>	
Civil Action No. 94-C-1707 - Circuit Court of Kanawha County . . .	\$56,511,981.22
<u>Cross Country Bank, et al. v. Darrell V. McGraw, Jr., Attorney General</u>	
Civil Action No. 04-C-464 - Circuit Court of Kanawha County	\$3,338,758.49
<u>State ex rel. Darrell V. McGraw, Jr. v. Purdue Pharma, LP, et al.</u>	
Civil Action No. 01-C-137-S - Circuit Court of McDowell County . . .	\$2,500,000.00
<u>State ex rel. Darrell V. McGraw, Jr. v. TeleCheck Services, Inc., et al.</u>	
Civil Action No. 00-C-3077 - Circuit Court of Kanawha County Docket No. 30731 - West Virginia Supreme Court of Appeals	\$450,000.00
<u>State ex rel. Darrell V. McGraw, Jr. v. H & H Windows Unlimited, Inc.</u>	
Civil Action No. 03-C-3075 - Circuit Court of Kanawha County	\$68,780.00
<u>State ex rel. Darrell V. McGraw, Jr. v. Phillips & Cohen Associates, Ltd.</u>	
Civil Action No. 05-MISC-175 - Circuit Court of Kanawha County	\$12,500.00

<u>State ex rel. Darrell V. McGraw, Jr. v. Carl Crowder, et al.</u>	
Civil Action No. 05-C-88 - Circuit Court of Kanawha County	\$10,776.70
<u>State ex rel. Darrell V. McGraw, Jr. v. Christopher Scott Long, et al.</u>	
Civil Action No. 04-C-818 - Circuit Court of Kanawha County	\$6,600.00
<u>State ex rel. Darrell V. McGraw, Jr. v. Regency Park at Huntington, LLC, et al.</u>	
Civil Action No. 04-C-901- Circuit Court of Cabell County	\$5,728.08
<u>State ex rel. Darrell V. McGraw, Jr. v. Huey Small d/b/a H&S Paving, et al.</u>	
Civil Action No. 97-C-1041 - Circuit Court of Kanawha County	\$5,500.00
<u>State ex rel. Darrell V. McGraw, Jr. v. Alyon Technologies, Inc., et al.</u>	
Civil Action No. 03-C-1197 - Circuit Court of Kanawha County	\$1,666.68
<u>State ex rel. Darrell V. McGraw, Jr. v. The Mandatory Poster Agency, Inc., et al.</u>	
Civil Action No. 05-C-1136 - Circuit Court of Kanawha County	\$207.25

CONSUMER PROTECTION ASSURANCES

IN THE MATTER OF HOMECOMINGS FINANCIAL NETWORK, INC. . . .	\$6,500,467.00
IN THE MATTER OF SELECT PORTFOLIO SERVICING, INC. f/k/a FAIRBANKS CAPITAL CORP.	\$5,435,761.06
IN THE MATTER OF MIDLAND CREDIT MANAGEMENT, INC.	\$3,548,539.80
IN THE MATTER OF INVESTIGATION OF THE COLLECTION OF DEBTS BY BARRY SUSSMAN, CHARLES T. HUTCHINS, WAYNE KRAUSE, ELIZABETH SUSSMAN AND CHECK INVESTORS, INC. d/b/a NATIONAL CHECK CONTROL	\$1,200,000.00
IN THE MATTER OF GLOBAL HOLDING AND INVESTMENT COMPANY LLC	\$578,899.63
IN THE MATTER OF AQUION PARTNERS, LP MANUFACTURER/DISTRIBUTOR OF RAINSOFT WATER TREATMENT SYSTEMS	\$547,166.38
IN THE MATTER OF DEBT MANAGEMENT CREDIT COUNSELING CORP.	\$92,739.53
IN THE MATTER OF NORVERGENCE, INC. AND LYON FINANCIAL SERVICES, INC. d/b/a U.S. BANCORP BUSINESS EQUIPMENT FINANCE GROUP	\$54,454.00

IN THE MATTER OF KEIS WHITLEY d/b/a KIRBY OF BECKLEY/ K&J DISTRIBUTING	\$51,357.80
IN THE MATTER OF NATIONAL WARRANTY INSURANCE RISK RETENTION GROUP d/b/a NATIONAL WARRANTY INSURANCE COMPANY AND NATIONAL WARRANTY INSURANCE GROUP	\$26,438.51
IN THE MATTER OF DAVID J. RICH AND FWP, INC.	\$19,996.68
IN THE MATTER OF PILOT FINANCIAL SERVICES COMPANY AND SARASOTA CCM, INC.	\$15,229.74
IN THE MATTER OF STATE FARM MUTUAL INSURANCE COMPANY	\$15,000.00
IN THE MATTER OF THE INVESTIGATION OF BRIDGET A. ERVIN, JOHN R. ERVIN AND JACQUELYN B. WHITE d/b/a ERVIN AUTO SALES	\$12,987.00
IN THE MATTER OF BLOCKBUSTER, INC.	\$12,508.23
IN THE MATTER OF MONTCROFT FARMS	\$12,420.00
IN THE MATTER OF PREMIUM PRE-OWNED AUTO, INC.	\$11,433.65
IN THE MATTER OF LARUE CAUSEY d/b/a FOUR SEASONS SIDING AND WINDOWS	\$8,928.36
IN THE MATTER OF JOSE LLC d/b/a BATH FITTER LLC	\$7,950.00
IN THE MATTER OF SAMER KALE AND HASSAN C. KANAAN d/b/a TWIN CITY USED CARS LLC	\$7,500.00
IN THE MATTER OF TV RETAILS, INC. d/b/a AS SEEN ON TV, AND ABDUL HAFEZ YASIR.	\$6,020.35
IN THE MATTER OF TED W. SOLARI, M.D. d/b/a PEDIATRIC CARE UNLIMITED, INC.	\$6,000.00
IN THE MATTER OF BIG SANDY FURNITURE, INC. AND 50% CASH BACK, INC.	\$5,368.71
IN THE MATTER OF ROBERT SHULTZ AND SUMMERON LLC d/b/a KIRBY HOME CARE CENTER	\$5,000.00
IN THE MATTER OF SHELBY RIFE AND S&M USED AUTOMOBILES AND MOBILE HOME SALES, INC.	\$4,000.00

IN THE MATTER OF PEGGY PFOST d/b/a PJ's USED AUTO SALES	\$3,500.00
IN THE MATTER OF PETER R. WHARTON d/b/a WHARTON'S AMOCO AND USED CARS	\$3,000.00
IN THE MATTER OF ROBERT HORTON AND HORTON CONSTRUCTION	\$2,654.13
IN THE MATTER OF DUKE LINZY d/b/a ALL CLEAN SEPTIC TANK SERVICE	\$2,650.00
IN THE MATTER OF VIRGIL PYLES AND SWAT EXTERMINATING, INC. . . .	\$2,500.00
IN THE MATTER OF PRUDENCE USED AUTO SALES, INC.	\$2,031.45
IN THE MATTER OF INDEPENDENT MARKETING, INC. Consumer Education	\$2,000.00
IN THE MATTER OF MPIS, INC. d/b/a MAGNUM PI SERVICES, INC.	\$1,211.97
IN THE MATTER OF JOHN HOWARD OPB & GMC, INC.	\$1,000.00
IN THE MATTER OF ASIA BROADWAY d/b/a BROADWAY PAVING AND SEAL COATING	\$800.00
IN THE MATTER OF B&H VINTAGE SALES d/b/a CRAZY DOG CONSIGNMENT d/b/a ANDREW'S UNIQUE ANTIQUES AND ELIZABETH A. HICKOK	\$700.00
IN THE MATTER OF LEE CONRAD d/b/a AFFORDABLE SELF-STORAGE . . .	\$500.00
IN THE MATTER OF SPERRY DRILLING, INC.	\$500.00
IN THE MATTER OF MARIZA A. LIRIO, M.D. d/b/a CRAB ORCHARD MEDICAL CLINIC	\$493.11
IN THE MATTER OF B&B SERVICE CENTER, INC. d/b/a YAMAHA/JOHN DEERE OF SISSONVILLE	\$428.40
IN THE MATTER OF BUICK-PONTIAC-GMC OF MORGANTOWN, INC.	\$375.00
IN THE MATTER OF PATTY GEMMILL d/b/a STARSIGN FARM	\$100.00

ANTITRUST LITIGATION

State ex rel. Darrell V. McGraw, Jr. v. Microsoft Corporation

Civil Action No. 01-C-197 - Circuit Court of Boone County \$1,849,835.00

State ex rel. Darrell V. McGraw, Jr. v. Abbott Laboratories, et al.

Civil Action No. 01-C-180 - Circuit Court of Wyoming County \$1,300,000.00

State of Alabama, et al. v. Bristol-Myers Squibb Co., et al.

Civil Action No. 01-CV-11401, MDL 1413 - U.S.D.Ct., Southern District of New York
. \$1,168,914.72

State of New York, et al. v. Aventis S.A., et al.

Civil Action No. 99-MDL-1278 - U.S.D.Ct., Eastern District of Michigan
. \$768,422.90

State of Ohio, et al. v. The Hearst Corporation, et al.

Civil Action No. 1:05CV00384 - U.S.D.Ct., District of Columbia \$10,000.00

Archer v. F. Hoffmann-LaRoche, Ltd., et al.

Civil Action No. 99-C-327 - Circuit Court of Kanawha County \$784.72

PRENEED LITIGATION

State ex rel. Darrell V. McGraw, Jr. v. Bartolo Funeral Home, Inc., et al.

Civil Action No. 04-C-361-2 - Circuit Court of Harrison County \$175,049.39

State ex rel. Darrell V. McGraw, Jr. v. Myers Funeral Home, Inc., et al.

Civil Action No. 04-C-78 - Circuit Court of Kanawha County \$13,578.36

PRENEED ASSURANCES

IN THE MATTER OF IAMS FUNERAL HOME, INC. \$7,620.00

IN THE MATTER OF BROWN FUNERAL HOME, INC. \$5,020.00

IN THE MATTER OF KELLER FUNERAL HOME, INC. \$5,665.00

IN THE MATTER OF BASAGIC FUNERAL SERVICE, INC. \$5,100.00

IN THE MATTER OF HELSLEY-JOHNSON FUNERAL HOME, INC. \$4,969.00

IN THE MATTER OF ARNER FUNERAL CHAPEL, INC. \$4,710.00

IN THE MATTER OF ANDERSON FUNERAL HOME \$2,960.00

IN THE MATTER OF WIDENER FUNERAL HOME, INC.	\$2,360.00
IN THE MATTER OF TAYLOR-VANDALE FUNERAL HOME, INC. d/b/a TAYLOR-VANDALE FUNERAL HOME AND MONUMENT COMPANY	\$2,160.00
IN THE MATTER OF J. E. JOHNSON FUNERAL HOME, INC.	\$2,130.00
IN THE MATTER OF STUMP FUNERAL HOMES, INC.	\$2,080.00
IN THE MATTER OF HUNTER-ANDERSON FUNERAL HOME	\$1,565.39

Exhibit 3

MEDIATION

Written complaints received during reporting period  8,683

Written complaints closed during reporting period  9,591

Written complaints pending for reporting period  700

[illegible]

Value received by consumers
from mediation during
reporting period \$1,433,107.19

Exhibit 4

[illegible]